

reviews shall be made as frequently as the board considers desirable and shall be made with respect to each ward at intervals not exceeding one year.

(c) Failure of the board to hear or review the case of a ward required by this section shall not of itself entitle the ward to discharge from the control of the Youth Authority but shall entitle him or her to petition the superior court of the county from which he or she was committed for an order of discharge, and the court shall discharge him or her unless the court is satisfied as to the need for further control.

1721. (a) The Youthful Offender Parole Board shall adopt policies governing the performance of its functions by the full board or, pursuant to delegation, by panels, or referees. Where the board performs its functions meeting en banc in either public or executive sessions to decide matters of policy, at least five members shall be present and no such action shall be valid unless it is concurred in by a majority vote of those present.

(b) Case hearing representatives may be employed to participate with the board in the hearing of cases and to whom authority may be delegated as provided in this section.

(c) The board may delegate its authority to hear, consider, and act upon cases to members or case hearing representatives, sitting either on a panel or as a referee. A panel may consist of two or more members, a member and a case hearing representative, or two case hearing representatives. Two members of a panel shall constitute a quorum, and no action of the panel shall be valid unless concurred in by a majority vote of those present.

(d) When delegating its authority, the board may condition the finality of the decision of the panel or referee to whom authority is delegated on concurrence of a member or members of the board. In determining whether, in any case, it shall delegate its authority and the extent of such delegation, the board shall take into account the degree of complexity of the issues presented by the case.

(e) The board shall adopt rules under which a person under the jurisdiction of the Youth Authority or other persons, as specified in such rules, may appeal any decision of a case hearing representative. The board shall consider and act upon the appeal in accordance with such rules.

1722. (a) Any rules and regulations, including any resolution and policy statements, promulgated by the Youthful Offender Parole Board, shall be promulgated and filed pursuant to Chapter 4, (commencing with Section 11731) of Part 4 of Division 8 of Title 2 of the Government Code, and shall, to the extent practical, be stated in language that is easily understood by the general public.

(b) The board shall maintain, publish and make available to the general public, a compendium of its rules and regulations, including any resolutions and policy statements, promulgated pursuant to this section.

(c) The following exception to the procedures specified in this

section shall apply to the board: The chairman may specify an effective date that is any time more than 30 days after the rule or regulation is filed with the Secretary of State; provided that no less than 20 days prior to such effective date, copies of the rule or regulation shall be posted in conspicuous places throughout each institution and shall be mailed to all persons or organizations who request them.

1723. (a) Except as provided in Section 1721, every order granting and revoking parole and issuing final discharges to any person under the jurisdiction of the Youth Authority shall be made by the Youthful Offender Parole Board and the board may not delegate the making of such decisions to any other body or person.

(b) All other powers conferred to the Youthful Offender Parole Board may be exercised through subordinates or delegated to the Department of the Youth Authority under rules established by the board. Any person subjected to an order of such subordinates or of the department pursuant to such delegation may petition the board for review. The board may review such orders under appropriate rules and regulations.

1724. The Youthful Offender Parole Board is limited in its expenditures to funds specifically made available for its use.

1725. The Youthful Offender Parole Board shall succeed to and shall exercise and perform all powers and duties granted to, exercised by, and imposed upon the Youth Authority Board. The Youth Authority Board is abolished.

1726. (a) Such employees of the Youthful Offender Parole Board as are needed to carry out its functions shall be selected and appointed pursuant to the State Civil Service Act.

(b) All officers and employees of the Department of the Youth Authority who on the effective date of this section are serving in the state civil service, other than as temporary employees, as part of the direct staff of the Youth Authority Board, including, but not limited to, those officers and employees performing the functions of administrative officer, case hearing representative, and case hearing coordinator, shall be transferred to the Youthful Offender Parole Board. The status, positions, and rights of such persons shall not be affected by the transfer and shall be retained by them as officers and employees of the Youthful Offender Parole Board pursuant to the State Civil Service Act.

SEC. 18. Section 1737.1 of the Welfare and Institutions Code is amended to read:

1737.1. Whenever any person who has been convicted of a public offense in adult court and committed to and accepted by the Youth Authority appears to the Youthful Offender Parole Board, either at the time of his or her first appearance before the board or thereafter, to be an improper person to be retained by the Youth Authority, or to be so incorrigible or so incapable of reformation under the discipline of the Youth Authority as to render his or her detention detrimental to the interests of the Youth Authority and the other

persons committed thereto, the board may order the return of such person to the committing court. The court may then commit him to a state prison or sentence him to a county jail as provided by law for the punishment of the offense of which he was convicted. The maximum term of imprisonment for a person committed to a state prison under this section shall be a period equal to the maximum term prescribed by law for the offense of which he was convicted less the period during which he was under the control of the Youth Authority. This section shall not apply to commitments from juvenile court.

SEC. 19. Section 1751 of the Welfare and Institutions Code is repealed.

SEC. 20. Section 1753 of the Welfare and Institutions Code is amended to read:

1753. For the purpose of carrying out its duties, the department is authorized to make use of law enforcement, detention, probation, parole, medical, educational, correctional, segregative and other facilities, institutions and agencies, whether public or private, within the state. The director may enter into agreements with local or appropriate public officials for separate care and special treatment in existing institutions of persons subject to the control of the department.

SEC. 21. Section 1754 of the Welfare and Institutions Code is amended to read:

1754. Nothing in this chapter shall be taken to give the Youth Offender Parole Board or the director control over existing facilities, institutions or agencies; or to require them to serve the board or the director inconsistently with their functions, or with the authority of their officers, or with the laws and regulations governing their activities; or to give the board or the director power to make use of any private institution or agency without its consent; or to pay any private institution or agency for services which a public institution or agency is willing and able to perform.

SEC. 22. Section 1757 of the Welfare and Institutions Code is amended to read:

1757. The director may inspect all public institutions and agencies whose facilities he or she and the Youthful Offender Parole Board are authorized to utilize and all private institutions and agencies whose facilities he and the board are using. Every institution or agency, whether public or private, is required to afford the director reasonable opportunity to examine or consult with persons committed to the Youth Authority who are for the first time being in the custody of the institution or agency.

SEC. 23. Section 1760 of the Welfare and Institutions Code is amended to read:

1760. The director is hereby authorized when necessary and when funds are available for such purposes to establish and operate:

- (a) Places for the detention, prior to examination and study, of persons committed to the Youth Authority;
- (b) Places for examination and study of persons committed to the Youth Authority.

Youth Authority;

(c) Places of confinement, educational institutions, hospitals and other correctional or segregative facilities, institutions and agencies, for the proper execution of the duties of the Youth Authority;

(d) Agencies and facilities for the supervision, training and control of persons who have not been placed in confinement or who have been released from confinement by the Youthful Offender Parole Board upon conditions, and for aiding such persons to find employment and assistance;

(e) Agencies and facilities designed to aid persons who have been discharged by the Youthful Offender Parole Board from its control in finding employment and in leading a law-abiding existence.

SEC. 24. Section 1762 of the Welfare and Institutions Code is repealed.

SEC. 25. Section 1764 of the Welfare and Institutions Code is repealed.

SEC. 26. Section 1765 of the Welfare and Institutions Code is amended to read:

1765. (a) Except as otherwise provided in this chapter, the Youthful Offender Parole Board shall keep under continued study a person in its control and shall retain him or her, subject to the limitations of this chapter, under supervision and control so long as in its judgment such control is necessary for the protection of the public.

(b) The board shall discharge such person as soon as in its opinion there is reasonable probability that he or she can be given full liberty without danger to the public.

SEC. 27. Section 1766 of the Welfare and Institutions Code is amended to read:

1766. When a person has been committed to the Youth Authority, the Youthful Offender Parole Board may

(a) Permit him his liberty under supervision and upon such conditions as it believes best designed for the protection of the public.

(b) Order his or her confinement under such conditions as it believes best designed for the protection of the public, except that a person committed to the Youth Authority pursuant to Sections 731 or 1731.5 may not be held in physical confinement for a total period of time in excess of the maximum period of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought the minor under the jurisdiction of the juvenile court, or which resulted in the commitment of the young adult to the Youth Authority. Nothing in this subdivision limits the power of the board to retain the minor or the young adult on parole status for the period permitted by Sections 1769, 1770, and 1771;

(c) Order recommitment or renewed release under supervision as often as conditions indicate to be desirable;

(d) Revoke or modify any order except an order of discharge as often as conditions indicate to be desirable;

(e) Modify an order of discharge if conditions indicate that such modification is desirable and when such modification is to the benefit of the person committed to the authority;

(f) Discharge him or her from its control when it is satisfied that such discharge is consistent with the protection of the public.

SEC. 28. Section 1767 of the Welfare and Institutions Code is repealed.

SEC. 29. Section 1767.3 of the Welfare and Institutions Code is amended to read:

1767.3. (a) The Youthful Offender Parole Board may suspend, cancel, or revoke any parole and may order returned to custody of the department any person committed to it who is upon parole.

(b) The written order of the chairman of the board is a sufficient warrant for any peace officer to return to the custody of the department any person committed to it who is upon parole or who has been permitted his or her liberty upon condition.

(c) The written order of the Director of the Department of the Youth Authority is a sufficient warrant for any peace officer to return to the custody of the department, pending further proceedings before the Youthful Offender Parole Board, any person committed to the department who is upon parole or who has been permitted his or her liberty upon condition, or for any peace officer to return to the custody of the department any person committed to it who has escaped from the custody of the department or from any institution in which he or she has been placed by the department.

(d) All peace officers shall execute any such orders in like manner as ordinary criminal process.

SEC. 30. Section 1767.4 of the Welfare and Institutions Code is amended to read:

1767.4. Whenever any person paroled by the Youthful Offender Parole Board is returned to the department upon the order of the board by a peace officer or probation officer, the officer shall be paid the same fees and expenses as are allowed such officers by law for the transportation of persons to institutions or facilities under the jurisdiction of the department.

SEC. 31. Section 1767.5 of the Welfare and Institutions Code is amended to read:

1767.5. The authority may pay any private home for the care of any person committed to the authority and paroled by the Youthful Offender Parole Board to the custody of the private home (including both persons committed to the authority under this chapter and persons committed to it by the juvenile court) at a rate to be approved by the Department of Finance. Payments for such care of paroled persons may be made from funds available to the authority for such purpose, or for the support of the institution or facility under the jurisdiction of the authority from which the person has been paroled.

SEC. 32. Section 1772 of the Welfare and Institutions Code is amended to read:

1772. Every person honorably discharged from control by the Youthful Offender Parole Board who has not, during the period of control by the authority been placed by the authority in a state prison shall thereafter be released from all penalties and disabilities resulting from the offense or crime for which he or she was committed, and every person discharged may petition the court which committed him or her, and the court may upon such petition set aside the verdict of guilty and dismiss the accusation or information against the petitioner who shall thereafter be released from all penalties and disabilities resulting from the offense or crime for which he or she was committed, including, but not limited to, any disqualification for any employment or occupational license, or both, created by any other provision of law. However, such a person shall not be eligible for appointment as a peace officer employed by any public agency, other than the Department of the Youth Authority, if his or her appointment would otherwise be prohibited by Section 1029 of the Government Code.

Every person discharged from control by the Youthful Offender Parole Board shall be informed of this privilege in writing at the time of discharge.

"Honorably discharged" as used in this section means and includes every person whose discharge is based upon a good record on parole.

SEC. 33. Section 1776 of the Welfare and Institutions Code is amended to read:

1776. Whenever an alleged parole violator is detained in a county detention facility pursuant to a valid exercise of the powers of the Department of the Youth Authority or of the Youthful Offender Parole Board as specified in Sections 1753, 1755, and 1767.3 and when such detention is initiated by the department or the board and is related solely to a violation of the conditions of parole and is not related to a new criminal charge, the county shall be reimbursed for the costs of such detention by the Department of the Youth Authority. Such reimbursement shall be expended for maintenance, upkeep, and improvement of juvenile hall and jail conditions, facilities, and services. Before the county is reimbursed by the department, the total amount of all charges against that county authorized by law for services rendered by the department shall be first deducted from the gross amount of the reimbursement authorized by this section. Such net reimbursement shall be calculated and paid monthly by the department. The department shall withhold all or part of such net reimbursement to a county whose juvenile hall or jail facility or facilities do not conform to minimum standards for local detention facilities as authorized by Section 6030 of the Penal Code or Section 210 of this code.

SEC. 33.5. Section 1776 of the Welfare and Institutions Code is amended to read:

1776. Whenever an alleged parole violator is detained in a county detention facility pursuant to a valid exercise of the powers of the Department of the Youth Authority or of the Youthful Offender

Parole Board as specified in Sections 1753, 1755, and 1767.3 and where such detention is initiated by the department or the board and related solely to a violation of the conditions of parole and is not related to a new criminal charge, the county shall be reimbursed for the costs of such detention by the Department of the Youth Authority. Such reimbursement shall be expended for maintenance, upkeep, and improvement of juvenile hall and jail conditions, facilities, and services. Before the county is reimbursed by the department, the total amount of all charges against that county authorized by law for services rendered by the department shall be first deducted from the gross amount of the reimbursement authorized by this section. Such net reimbursement shall be calculated and paid monthly by the department. The department shall withhold all or part of such net reimbursement to a county whose juvenile hall or jail facility or facilities do not conform to minimum standards for local detention facilities as authorized by Section 606 of the Penal Code or Section 210 of this code.

"Costs of such detention", as used in this section, shall include the same cost factors as are utilized by the Department of Corrections in determining the cost of prisoner care in state correctional facilities.

SEC. 34. Section 1780 of the Welfare and Institutions Code is amended to read:

1780. If the date of discharge occurs before the expiration of the period of control equal to the maximum term prescribed by law for the offense of which he or she was convicted, and if the Youthful Offender Parole Board believes that unrestrained freedom for such person would be dangerous to the public, the board shall petition the court by which the commitment was made.

The petition shall be accompanied by a written statement of the facts upon which the board bases its opinion that discharge from its control at the time stated would be dangerous to the public, but no such petition shall be dismissed merely because of its form or an asserted insufficiency of its allegations; every order shall be reviewed upon its merits.

SEC. 35. Section 1782 of the Welfare and Institutions Code is amended to read:

1782. Such committing court may thereupon discharge the person, admit him or her to probation or may commit him or her to the state prison. The maximum term of imprisonment for a person committed to a state prison under this section shall be a period equal to the maximum term prescribed by law for the offense of which he or she was convicted less the period during which he or she was under the control of the Youth Authority.

SEC. 36. Section 1800 of the Welfare and Institutions Code is amended to read:

1800. Whenever the Youthful Offender Parole Board determines that the discharge of a person from the control of the Youth Authority at the time required by Section 1769, 1770, 1770.1, or 1771,

as applicable, would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality, the board, through its chairman, shall make application to the committing court for an order directing that the person remain subject to the control of the authority beyond such time. The application shall be filed at least 90 days before the time of discharge otherwise required. The application shall be accompanied by a written statement of the facts upon which the board bases its opinion that discharge from control of the Youth Authority at the time stated would be physically dangerous to the public, but no such application shall be dismissed nor shall an order be denied merely because of technical defects in the application.

SEC. 37. Section 1802 of the Welfare and Institutions Code is amended to read:

1802. When an order for continued detention is made as provided in Section 1801, the control of the authority over the person shall continue, subject to the provisions of this chapter, but, unless the person is previously discharged as provided in Section 1766, the Youthful Offender Parole Board shall, within two years after the date of such order in the case of persons committed by the juvenile court, or within five years after the date of such order in the case of persons committed after conviction in criminal proceedings, file a new application for continued detention in accordance with the provisions of Section 1800 if continued detention is deemed necessary. Such applications may be repeated at intervals as often as in the opinion of the board may be necessary for the protection of the public, except that the department shall have the power, in order to protect other persons in the custody of the department to transfer the custody of any person over 21 years of age to the Director of Corrections for placement in the appropriate institution.

Each person shall be discharged from the control of the authority at the termination of the period stated in this section unless the board has filed a new application and the court has made a new order for continued detention as provided above in this section.

SEC. 38. Section 1830 of the Welfare and Institutions Code is amended to read:

1830. The Director of the Youth Authority may, with approval of the Youthful Offender Parole Board, participate in a local work furlough program established pursuant to subdivision (a) of Section 1208 of the Penal Code, or conduct or discontinue a work furlough rehabilitation program, in accordance with the provisions of this article, for appropriate classes of wards at one or more Youth Authority institutions. He or she may designate any officer or employee of the department to be the Youth Authority work furlough administrator and may assign personnel to assist the administrator.

SEC. 39. It is the intent of the Legislature, if this bill and Assembly Bill 1088 are both chaptered and become effective January 1, 1980, both bills amend Section 1776 of the Welfare and Institutions

Code, and this bill is chaptered after Assembly Bill 1088, that the amendments to Section 1776 proposed by both bills be given effect and incorporated in Section 1776 in the form set forth in Section 33.5 of this act. Therefore, Section 33.5 of this act shall become operative only if this bill and Assembly Bill 1088 are both chaptered and become effective. January 1, 1980, both amend Section 1776, and this bill is chaptered after Assembly Bill 1088, in which case Section 33.5 of this act shall not become operative.

CHAPTER 861

An act to amend Section 25100 of the Corporations Code, relating to corporations.

[Approved by Governor September 21, 1979. Filed with Secretary of State September 22, 1979.]

The people of the State of California do enact as follows:

SECTION 1. Section 25100 of the Corporations Code is amended to read:

25100. The following securities are exempted from the provisions of Sections 25110, 25120, and 25130:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state or any agency or corporation or other instrumentality of any one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(b) Any security issued or guaranteed by the Dominion of Canada, any Canadian province, any political subdivision or municipality of any such province, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; or any certificate of deposit for any of the foregoing.

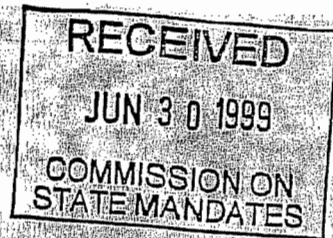
(c) Any security issued or guaranteed by and representing an interest in or a direct obligation of a national bank or a bank or trust company incorporated under the laws of this state, and any security issued by a bank to one or more other banks and representing an interest in an asset of the issuing bank.

(d) Any security issued or guaranteed by a federal savings and loan association or federal land bank or joint land bank or national farm loan association or by any savings and loan association which is subject to the supervision and regulation of the Savings and Loan Commissioner of this state.

(e) Any security (other than an interest in all or portions of a parcel or parcels of real property which are subdivided land or

Test Claim of the County of Alameda
Extended Commitment - Youth Authority
98-TC-13

Declaration of Thomas Orloff
Response to Department of Finance



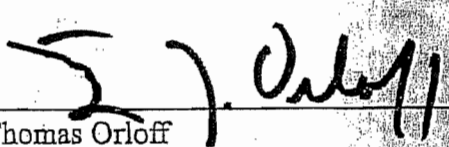
I, Thomas Orloff, state:

I am the duly elected and acting District Attorney for the County of Alameda.

I have read the Response of the Department of Finance, by letter dated June 17, 1999 to Ms. Paula Higashi.

I concur in the conclusion of the Department of Finance that the statutes in question constitute a reimbursable state mandate.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 21 day of June, 1999, at Oakland, California.



Thomas Orloff
District Attorney

PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On June 30, 1999, I served the Test Claim of the County of Alameda, Extended Commitment - Youth Authority, 98-TC-13, Declaration of Thomas Orloff, Response to Department of Finance, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list, and by sealing and depositing said envelope in the United State mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 30th day of June, 1999 at Sacramento, California.

A handwritten signature in cursive script, appearing to read "John A. Lee", is written over a horizontal line.

MAILING LIST

Mr. James Apps
Department of Finance
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Sacramento, CA 95814

Ms. Marcia C. Faulkner, Manager
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3301 C Street, Suite 500
Sacramento, CA 95816

STATE OF CALIFORNIA

DEPARTMENT OF FINANCE

915 L STREET
SACRAMENTO, CA 95814-8706

June 17, 1999

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of May 10, 1999 the Department of Finance has reviewed the test claim submitted by the County of Alameda (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 546, Statutes of 1984 and Chapter No. 267, Statutes of 1998, (SB 2187, Schiff), are reimbursable state mandated costs (Claim No. CSM-98-TC-13 "Extended Commitments-Youth Authority"). Commencing with Page 4, of the test claim, claimant has identified the transfer of responsibility for the filing and prosecution of specified actions, from the Youthful Offender Parole Board to the District Attorney of the committing court, which it asserts are reimbursable state mandates (Welfare and Institutions Code, Section 1800 through 1803). As the result of our review, we have concluded that the statute resulted in a reimbursable state mandate. If the Commission reaches the same conclusion at its scheduled December 16, 1999 hearing on the matter, the nature and extent of the specific activities required of Alameda County can be addressed in the parameters and guidelines which will then have to be developed for the program.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your May 10, 1999 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service. If you have any questions regarding this letter, please contact James Lombard, Principal Program Budget Analyst at (916) 445-8913 or James Apps, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

S. CALVIN SMITH
Program Budget Manager

Attachments

Hearing Date: November 30, 2000
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ITEM _____

**TEST CLAIM
DRAFT STAFF ANALYSIS**

Welfare and Institutions Code Sections 1800, 1801 and 1801.5
Statutes of 1984, Chapter 546
Statutes of 1998, Chapter 267

Extended Commitment—Youth Authority

EXECUTIVE SUMMARY

Staff will include the Executive Summary in its Final Analysis.

Claimant

County of Alameda

Chronology

05/10/99 Claimant files test claim with the Commission

06/17/99 Department of Finance files response

Background

The test claim legislation deals with the extended commitment of juvenile offenders subject to the jurisdiction of the California Youth Authority (CYA).

Under California law, the CYA may not retain a ward in custody beyond the age of 25. In 1963, in recognition that the release of dangerous wards may pose a threat to public safety, section 1800 was added to the Welfare and Institutions Code.¹ It permitted the extended commitment of dangerous CYA wards for an additional two years beyond their scheduled time for discharge.² However, the extended commitment of dangerous CYA wards is not considered penal in nature, but civil. The CYA is under an affirmative duty to provide treatment. If the ward is not dangerous due to a physical or mental condition, or the condition is not treatable, the ward cannot be held beyond his release date.³

Section 1800 of the test claim legislation provides that, if the Youthful Offender Parole Board (YOPB) (formerly Youth Authority Board) determines the discharge of a CYA ward would be physically dangerous to the public due to the individual's mental or physical deficiency, disorder, or abnormality, the YOPB shall request the prosecuting district attorney to petition the committing court for an order directing the ward to remain in the custody of the YOPB.⁴ The YOPB's request to the prosecuting district attorney initiates the extended commitment process, which is comprised of three stages, four including the appeals process.

In stage one, the prosecuting district attorney petitions the court to extend the commitment of dangerous CYA wards by submitting a written statement of facts supporting the YOPB's opinion that the CYA ward poses a danger to the public. If on its face the petition supports a finding of probable cause, then the court is required to order a preliminary hearing.

¹ All cites will be to Welfare and Institutions Code unless otherwise noted.

² The Youthful Offender Parole Board (YOPB) may seek the extended commitment of dangerous CYA wards in two-year increments. See Government Code section 1802.

³ *People v. Gary* (1971) 5 Cal.3d 296. See Exhibit__.

⁴ The determination of physically dangerous and mental or physical deficiency, disorder, or abnormality is subject to a reasonable interpretation. (*People v. Cavanaugh* (1965) 234 Cal.App.2d 316.) See Exhibit__.

Prior to the test claim legislation amending section 1800, the YOPB was required to petition the committing court directly. Now, the YOPB is required to request that the prosecuting district attorney petition the committing court on its behalf.

In stage two, at the preliminary hearing, the court must find probable cause that, if released, the CYA ward poses a danger to the public. At this hearing, evidence may be presented and witnesses called. If the court makes a finding of probable cause that the CYA ward's release poses a danger to the public, the court is required to order the extended commitment of the ward. If the court makes such an order, by right, the case will then proceed to stage three, a jury trial.

Prior to the test claim legislation amending section 1801 in 1998, the standard of proof at the preliminary hearing was beyond a reasonable doubt.⁵ The amendment to the test claim legislation lowered the burden to probable cause.⁶

In stage three, the CYA ward has a right to a jury trial unless waived. At the trial the jury affirms or denies the court's extended commitment order by answering the following question: "Is the person physically dangerous to the public because of his mental or physical deficiency, disorder, or abnormality?"⁷ To affirm the court's order the jury must unanimously decide beyond a reasonable doubt that the CYA ward poses a danger to the public if released.

Prior to the 1984 test claim legislation amending section 1801.5, it was uncertain whether jury unanimity and proof beyond a reasonable doubt was required to extend the commitment of a dangerous CYA ward.⁸ The 1984 amendment reflects the court's holding in *People v. Vernal D.* (1983) 142 Cal.App.3d 29,⁹ which held jury unanimity and proof beyond a reasonable doubt are constitutionally required.¹⁰

Finally, if the jury affirms the court's extended commitment order, the district attorney may end up defending an appeal filed by the committed CYA ward.

⁵ The test claim legislation included only minor and technical changes to section 1801.

⁶ The standard of proof, whether beyond a reasonable doubt or probable cause, does not impose additional activities upon claimant under the present circumstances; and therefore, it is irrelevant to the issue of reimbursement. Accordingly, the staff analysis will not address this provision of the test claim legislation.

⁷ Government Code section 1801.5.

⁸ The test claim legislation included only minor and technical changes to section 1801.

⁹ See Exhibit __.

¹⁰ The requirements of a unanimous jury trial and proof beyond a reasonable doubt does not impose any additional activities upon claimant under the present circumstances; and therefore, it is irrelevant to the issue of reimbursement. Accordingly, the staff analysis will not address these provisions of the test claim legislation.

Claimant's Contentions

Claimant contends that the test claim legislation constitutes a reimbursable state mandated program by shifting the responsibility from petitioning the committing court to extend the commitment of a dangerous CYA ward from the YOPB to the prosecuting attorney, or in practice, the prosecuting district attorney.

Department of Finance's Contentions

The Department of Finance (Finance) agrees with claimant, and finds that the test claim legislation imposes a reimbursable state mandated program. However, Finance asserts that the extent of claimant's reimbursement can be addressed in the Parameters and Guidelines.

Staff Analysis

In order for a statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does not mandate or require local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create an increased or higher level of service over the former required level of service. The California Supreme Court has defined the word "program" subject to article XIII B, section 6, of the California Constitution as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

Finally, the new program or increased level of service must impose "costs mandated by the state" pursuant to Government Code section 17514.¹¹

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation constitute a new program or higher level of service and impose costs mandated by the state?

These issues are addressed below.

¹¹ Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

Article XIII B, section 6 of the California Constitution states that "whenever the Legislature or any state agency *mandates* a new program or higher level of service *on any local government*, the state shall provide a subvention of funds." (Emphasis added.)

Thus, in order for a test claim statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does not mandate or require local agencies to perform a task, then article XIII B, section 6 is not triggered. In such a case, compliance with the test claim statute is within the discretion of the local agency.

In the present case, section 1800 of the test claim legislation requires the YOPB chairman to request that the prosecuting district attorney petition the committing court to extend the commitment of dangerous CYA wards. However, the test claim legislation does not require the prosecuting district attorney to petition the committing court on the behalf of the YOPB. In fact, the test claim legislation states, "[t]he prosecuting attorney shall promptly notify the Youthful Offender Parole Board of a decision not to file a petition." Thus, staff finds that the prosecuting district attorney's responsibility to petition the committing court on behalf of the YOPB can be interpreted as optional; and therefore, the test claim legislation would not be state mandated. In fact, the legislative history provides that the prosecuting district attorney's prompt notification would allow the YOPB time to contact the Attorney General's Office, so it could timely file the petition on YOPB's behalf.¹²

However, the legislative history also indicates that the Attorney General's Office has continually declined to file petitions to extend the commitment of dangerous CYA wards on YOPB's behalf.¹³ As a result, the prosecuting district attorney has always petitioned the committing court on behalf of the YOPB, and the 1984 amendment to section 1800 did nothing more than codified this existing practice.^{14, 15}

According to the California Supreme Court, the prosecuting district attorney has the exclusive authority to prosecute individuals on behalf of the public under Government Code section 26500.^{16, 17} This does not mean that the prosecuting district attorney is

¹² Assembly Criminal Law and Public Safety committee Bill Analysis dated April 4, 1984. See Exhibit__.

¹³ California Youth Authority Bill Analysis dated March 2, 1984. See Exhibit__.

¹⁴ *Id.*

¹⁵ Government Code section 17565 states, "If a local agency or school district, at its option, has been incurring cost which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

¹⁶ *People v. Eubanks* (1996) 14 Cal.4th 580, 587-590. See Exhibit__.

required to prosecute all individuals committing public offenses. The decision whether or not to prosecute is left to the decision of the prosecuting district attorney.¹⁸

However, the Court noted that if the prosecuting district attorney does not prosecute a case involving serious issues of public concern, the prosecuting district attorney would be in gross dereliction of his duty to the public.

In the present case, staff finds that the prosecuting district attorney is faced with two choices: (1) the prosecuting district attorney can choose to petition the court to extend the commitment of dangerous CYA wards on behalf of YOPB; or (2) the prosecuting district attorney can decline to petition the court on behalf of YOPB, and allow dangerous CYA wards to be released in the community. If the prosecuting district attorney declines to prosecute dangerous CYA wards, he could be in gross dereliction of his duty to the public.¹⁹ Therefore, staff finds that the test claim legislation requires the prosecuting district attorney to petition the committing court for the extended commitment of dangerous CYA wards on behalf of the YOPB.

Accordingly, staff concludes that the test claim legislation is subject to article XIII B, section 6 of the California Constitution?

Issue 2: Does the test claim legislation constitute a new program or higher level of service and impose costs mandated by the state?

The test claim statute requires the prosecuting district attorney to petition the committing court to extend the commitment of dangerous CYA wards on behalf of the YOPB. In this regard, the prosecuting district attorney is required to perform the following activities:

- Review the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
- Prepare and file petitions with the superior court for the extended commitment of dangerous CYA wards;
- Represent the state in the preliminary hearing and civil trial regarding the filed petitions for the extended commitment of dangerous CYA wards;

¹⁷ Staff notes that the Court's statements in *Eubanks* were in the context of criminal prosecutions, specifically prosecutions of felonies. However, the extended commitment process requires the prosecuting district attorney to civilly prosecute dangerous CYA wards, which is similar to criminal prosecutions. Both can result in confinement of the individual. Moreover, the test claim legislation provides the CYA wards facing extended commitment are entitled to all the rights guaranteed under the federal and state constitutions in criminal proceedings. Therefore, staff finds that the use of case law surrounding criminal prosecutions is appropriate.

¹⁸ *People v. Eubanks* (1996) 14 Cal.4th 580, 587-590.

¹⁹ See, *Id.*

- Retain necessary experts, investigators, and professionals to prepare for the preliminary hearing and civil trial regarding the filed petitions for the extended commitment of dangerous CYA wards.

The purpose of the test claim legislation is to extend the commitment of dangerous CYA wards. The extended commitment of dangerous CYA wards in California is a peculiarly governmental function administered by local agencies as a service to the public. Moreover, the test claim legislation imposes unique requirements upon counties that do not apply generally to all residents and entities of the state. Therefore, the extended commitment of CYA wards constitutes a "program" within the meaning of section 6, article XIII B of the California Constitution.²⁰

Staff further finds that the activities performed by the district attorney to petition the committing court on behalf of the YOPB, and to represent the state in all subsequent proceedings regarding the extended commitment of dangerous CYA wards, was not previously imposed on district attorneys. Accordingly, staff finds that the test claim legislation constitutes a new program or higher level of service and imposes costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Conclusion

Based on the foregoing, staff concludes that the test claim legislation does impose a reimbursable state-mandated program upon counties within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities:

- Review the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
- Prepare and file petitions with the superior court for the extended commitment of dangerous CYA wards;
- Represent the state in the preliminary hearing and civil trial regarding the filed petitions for the extended commitment of dangerous CYA wards;
- Retain necessary experts, investigators, and professionals to prepare for the preliminary hearing and civil trial regarding the filed petitions for the extended commitment of dangerous CYA wards.

Recommendation

Therefore, staff recommends that the Commission approve the test claim *Extended Commitment - Youth Authority* Test Claim for the above listed activities.

²⁰ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

Commission on State Mandates

List Date: 05/17/1999

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Chap. 546/84 & 267/98

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Extended Commitment - Youth Authority

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EXHIBIT L



October 23, 2000

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

Review of Commission's Draft Staff Analysis
Welfare and Institutions Code Sections 1800, 1801 and 1801.5
Statutes of 1984, Chapter 546, Statutes of 1998, Chapter 267
Extended Commitment - Youth Authority

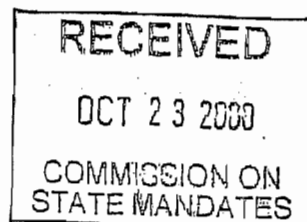
We submit and enclose herein the subject review.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

J. Tyler McCauley
Auditor-Controller

JTM:JN:LK
Enclosures



Review of Commission's Draft Staff Analysis
Welfare and Institutions Code Sections 1800, 1801 and 1801.5
Statutes of 1984, Chapter 546, Statutes of 1998, Chapter 267
Extended Commitment - Youth Authority

On October 5, 2000, Commission staff provided their first impression of the test claim filed by Alameda County to obtain reimbursement for new duties in the adjudication of extended commitment proceedings for juvenile wards subject to the jurisdiction of the California Youth Authority [CYA]. Staff appear to conclude, on page 6 of their analysis, that the district attorney's costs in implementing the test claim legislation are reimbursable.

Further, the list of reimbursable activities in staff's conclusion, on page 7 of their analysis, does not indicate whether indigent defense services are included. Also, there is no mention of whether required transportation and custody of CYA juvenile wards result in reimbursable costs.

Therefore, in an abundance of caution, the County of Los Angeles asserts that indigent defense, transportation and custody costs which were incurred solely to implement the test claim legislation are reimbursable "costs mandated by the State", as defined in Section 17514 of the Government Code.

This Extended Commitment Proceeding is no Different From Others

Other State extended commitment proceeding programs provide for reimbursement of indigent defense, transportation and custody costs. This program is no different. As noted in the Assembly Committee on Public Safety's analysis for the June 23, 1998 hearing on SB 2187 [Chapter 267, Statutes of 1998] attached, on pages 7-8:

"... civil commitment procedures for treatment of dangerous individuals is not new in California. For example, since 1986 there has been a civil commitment scheme for mentally disordered offenders (MDOs) and since 1998 for sexually violent predators (SVPs). This bill's provisions are modeled on, and are analogous to, procedures used for MDOs and SVPs."

The types of services that the Commission found reimbursable for the SVP program include costs of indigent defense as well as transport and custody of State prisoner.

For example, counties are to be reimbursed for the preparation and attendance by the county's indigent defense counsel at the SVP probable cause hearing, including: attorney, secretarial, paralegal, and investigator services; copying charges; long distance telephone charges; and, travel to either meet and confer with a defendant housed outside the jurisdiction and/or to review defendant record(s) available only at a State institution.

In addition, SVP reimbursement was provided for preparation and attendance by the county's indigent defense counsel at pre-trial and trial hearings, including: attorney, secretarial, paralegal, and investigator services; copying charges; long distance telephone charges; and, travel to either meet and confer with a defendant housed outside the jurisdiction and/or to review defendant record(s) available only at a State institution, was found to be reimbursable.

Also, SVP reimbursement was provided for retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator, including: copying charges; long distance telephone charges; and, travel to either meet and confer with a defendant housed outside the jurisdiction and/or to review defendant record(s) available only at a State institution.

Further, SVP reimbursement was provided for transportation and housing costs for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator.

Regarding, the MDO extended commitment program, the costs of indigent defense as well as transport and custody of the MDO defendant, have been found reimbursable by Commission staff in their October 5, 2000 draft analysis of Los Angeles County's test claim on Mentally Disordered Offender's Extended Commitment Proceedings [CSM 98-TC-09], as noted on pages 9-10 thereof.

It should also be noted that the Ps&Gs for the Mentally Disordered Sexual Offender [MDSO] extended commitment program as well as the Not Guilty by Reason of Insanity [NGI] extended commitment program provide for reimbursement of indigent defense, transportation and custody costs.

CYA Extended Commitment Proceedings are a State Matter

As noted by Commission staff, on page 3 of their analysis:

"Prior to the test claim legislation amending section 1800, the YOPB was required to petition the committing court directly. Now, the YOPB is required to request that the prosecuting district attorney petition the committing court on its behalf." [Emphasis added]

The object of the [above] petition is to determine if wards of the California Youth Authority should have their commitment extended for an additional two years beyond their scheduled time of discharge. These wards, then, are wards of the State, in State institutions, administered solely by the State California Youth Authority. The action is the action of the State Youthful Offender Parole Board.

The local district attorney merely acts on behalf of the State. This arrangement is similar to the arrangement in the MDO, SVP, NGL, MDSO Extended Commitment programs. The Legislature has freely chosen to assign the county district attorney duties in implementing all the [above] State extended commitment proceedings, and now does so for the CYA program.

NGI's Example

Regarding extended commitment proceedings for State prisoners found not guilty by reason of insanity (NGI), on May 11, 1979, Mr. Robert H. Philibosian, Chief Assistant Attorney General, Criminal Division wrote to Mr. John K. Van de Kamp, District Attorney, Los Angeles County, and indicated in his letter, included in Tab 5, of County's Review of State Agency Comments on the NGI Ps&Gs, filed May 1, 1997, on page 2, that:

"The Attorney General must rely upon the assistance of district attorneys in each county to bring extended commitment hearings. Since the extended commitment hearings are brought against patients confined in State facilities and for the protection of the people of the State of California, state reimbursement for expenses incurred by the county in handling the hearings would seem to be in order."

.....

"Since the Attorney General has primary responsibility as the chief law enforcement officer of the State, the costs incurred by the delegation of these important duties to local district attorney should be absorbed by the state."

State Public Defender's Role

It should be noted that the State Public Defender, along with the State Attorney General, was used by the courts in extended commitment proceedings for State prisoners.

For example, under the MDSO extended commitment proceedings, indigent defense duties were initially performed by the State Public Defender, according to SCO's MDSO claiming instructions on page 1, in Tab 2, of County's Review of State Agency Comments on the NGI Ps&Gs, filed May 1, 1997, which states: "If the patient is indigent, the State Public Defender shall be appointed". Now such indigent defense duties have been delegated to county public defenders. Most importantly, the resulting indigent defense costs have been recognized as reimbursable under Article XIIIB, Section 6 of the California Constitution.

State-Mandated Representation of Indigents in Mental Health Matters

When the Legislature enacted the test claim legislation, requiring indigent defense services if the CYA ward "... is unable to provide his or her own counsel" [Welfare and Institutions Code section 1801], it did so with the knowledge that it had already mandated the Counties to provide such services in civil proceedings on mental health matters under GC 27706 (d):

"Upon request, or upon order of the court, the (county) public defender shall represent any person who is not financially able to employ counsel in proceedings under Division 4 (commencing with Section 1400) of the Probate Code and Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code."

So when the legislature enacted the CYA extended commitment test claim legislation, requiring the court to appoint indigent defense counsel [W&I 1801], it knew it was adding a new group of clients to the county public defenders' case load and that resulting "costs mandated by the State" were reimbursable to counties as "new programs or higher levels of services" as articulated in section 6 of Article XIIIB of the California Constitution and 17500 et seq. of the Government Code.

In addition, GC 27706 (e) provides that:

"Upon order of the court, the (county) public defender shall represent any person who is entitled to be represented by counsel but is not financially able to employ counsel in proceedings under Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code."

Here, also, if ordered by the court to represent an indigent defendant, a county public defender would be entitled to reimbursement under the same principle stated above for GC 27706(d).

State Reimbursement of County Public Defender Costs in State Commitment Proceedings

In some cases, the Legislature has explicitly provided for county public defender reimbursements for representing indigents in mental health matters. For example, WIC section 6513 captioned "Payment of costs" provides:

"(a) The State Department of Development Services shall pay for the costs, as defined in this section, of judicial proceedings, including commitment, placement, or release, under this article under both of the following conditions:

(1) The judicial proceedings are in a county within which a state hospital or a developmental center maintains a treatment program for mentally retarded persons who are a danger to themselves or others.

(2) The judicial proceedings relate to a mentally retarded person who is at the time residing in the state hospital or Development center located in the county of the proceedings.

(b) The county clerk of a county described in subdivision (a) may prepare a statement of all costs incurred by the county in

the investigation, preparation for, and conduct of the proceeding, including any costs of the district attorney or county counsel and any *public defender or court-appointed counsel* representing the person, and including any costs incurred by the county for the guarding or keeping of the person while away from the state Hospital and for transportation of the person to and from the hospital. The statement shall be certified by a judge of the superior court and shall be sent to the State Department of Developmental Services. In lieu of sending statements after each proceeding, the statements may be held and submitted quarterly for the proceeding three-month period." [Emphasis added.]

Here again, the Legislature has explicitly provided that indigent persons in civil commitment proceeding are entitled to representation by the county public defender or court-appointed counsel and that the county is entitled to State reimbursement for its resulting state mandated indigent defense costs.

Public Defenders' Experts are not County Charges

When court-appointed experts are required by the Public Defender, their costs are not a fiscal obligation or charge to the county in civil proceedings. Specifically, Evidence Code Section 731 captioned "Payment of court-appointed expert" requires that such expert charges are the county's obligation under 731(a) "in all criminal actions and juvenile court proceedings" but not so under 731 (b) which provides that such county charges be made only where "the board of supervisors so provides" and under 731(c) as follows:

"Except as other provided in this section, in all civil actions, the compensation fixed under Section 730 shall, in the first instance, be apportioned and charged to the several parties in such proportion as the court may determine and may thereafter be taxed and allowed in like manner as other costs".

Therefore under 731(c) above, the county shall charge the "several parties" to the civil action, not itself, for court-appointed experts required under the CYA extended commitment proceedings.

The Parties to be Charged Do Not Include Counties

The defendant in the CYA civil litigation is a State ward. The plaintiff, with the burden of proving the need to extend the defendant's commitment is the State Youthful Offender Parole Board (YOPB). And when the district attorney, on behalf of the State YOPB, initiates a CYA extended commitment proceeding, the other party to the action is the State juvenile ward. Neither the county's public defender nor the court's appointed counsel are parties to the action. They merely represent the State ward.

Therefore, the county is not a party to the CYA litigation. It simply represents the parties and performs substantial legal work on their behalf.

When the Legislature chose to delegate the legal representation of the YOPB from the State Attorney General to the District Attorney, it did so freely. There was no federal law that said the County's attorneys should be used and not the State's. There was no reason why the State could not have increased its State Attorney General's office and its State Public Defender's office to provide legal representation to CYA parties. It even could have privatized such legal services.

But the State freely choose to have counties provide legal representation for its CYA extended commitment program and, as in any private civil litigation, the State must pay its legal costs.

State Public Defender Duties

Under the MDSO extended commitment proceedings, the State Public Defender was initially required to provide indigent defense services, as previously discussed. Over the years, the State Public Defender has relied on the county public defenders to provide such services.

Therefore, while State Public Defenders are authorized to provide CYA indigent defense services to State wards, such responsibilities have traditionally been given the counties, as previously discussed. And when counties are chosen, they provide such new indigent defense services 'at public expense' ... and thus, under section (6), article XIIB of the Constitution, are entitled to reimbursement.

The Costs for Indigent Defense, Transportation and Custody of State CYA Wards Should be Charged the State

Government Code Section 29602 provides that indigent defense, transportation custody services are county charges if, such services pertain to criminal matters and to county prisoners. In pertinent part, GC 29602 specifically requires that:

“The expenses necessarily incurred in the support of persons charged with or convicted of a crime and committed to the county jail ... and for other services in relation to criminal proceedings for which no specific compensation is provided by law are county charges.”

The State, not counties, should therefore be charged for CYA indigent defense, transportation and custody service costs as these services are provided not in relation to criminal proceedings and not to those committed to the county jail, but in relation to civil proceedings and to those committed to State institutions.

Conclusion

Commission staff's analysis of the subject CYA extended commitment test claim should be completed and clarified to indicate that the types of reimbursable costs asserted herein, including indigent defense, transportation and custody costs, resulting from civil proceedings for CYA wards committed to State institutions, are "costs mandated by the State" as defined in Government Code section 17514.



J. TYLER McCAULEY
AUDITOR-CONTROLLER

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Review of Commission's Draft Staff Analysis
Alameda County Test Claim
Welfare and Institutions Code Sections 1800, 1801 and 1801.5
Statutes of 1984, Chapter 546, Statutes of 1998, Chapter 267
Extended Commitment - Youth Authority

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, SB90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims and supplemental amendments thereto, reviews of State agency comments, Commission staff analyses and extensions of time to respond thereto and to postpone hearings thereon, and for proposing parameters and guidelines (Ps&Gs) and clarifications and amendments thereto, and for filing incorrect reduction claims, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the attached review of Commission's draft staff analysis of the subject test claim filed by Alameda County.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such duties and resulting costs, as reflected in the attached document, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

10/23/00; Los Angeles, CA
Date and Place

Signature

Leonard Kaye

SB 2187
Page 1

Date of Hearing: June 23, 1998
Chief Counsel: Judith M. Garvey

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Don Perata, Chair

SB 2187 (Schiff) - As Amended: April 28, 1998

SUMMARY : Recasts, clarifies and revises the current law concerning the civil commitment of California Youth Authority wards (CYA) beyond the age of 25. Specifically, this bill repeals a redundant hearing procedure to determine whether to proceed with a commitment hearing to determine if a minor shall be held within the CYA past age 25.

EXISTING LAW :

1) Welfare and Institutions Code (WIC) Section provides that:

- a) The Juvenile Court may retain jurisdiction over any person found to be a ward or dependent child of the juvenile court until the ward or dependent child attains the age of 21 years, except as noted in Existing Law provisions 1(b), 1(c) and 1(d). (WIC Section 607(a).)
- b) The Juvenile Court may retain jurisdiction over any person found to be a ward based upon the commission of a criminal offense which is serious or violent until that person attains the age of 25 years if the person was committed to the CYA. (WIC Section 607(b).)
- c) The Juvenile Court may not discharge any person from its jurisdiction who has been committed to the CYA so long as the person remains under the jurisdiction of the CYA, including periods of extended control ordered pursuant to a WIC Section 1800 commitment. (WIC Section 607(c).)
- d) The court may retain jurisdiction over a ward adjudicated a ward for the commission of a serious or violent offense who has been confined in a state hospital or other appropriate public or private mental health facility pursuant until that person has attained the age of 25 years, unless the court which committed the person finds, after notice and hearing, that the person's sanity has been restored. (WIC Section 607(d).)
- e) As an implied exception to WIC Section 607(a), the Juvenile Court may retain jurisdiction during the pendency of an arrest warrant.

2) WIC Section 1769 provides that the CYA has jurisdiction over

wards remanded to it from the Juvenile Court until the following ages:

a) Until the ward attains the age of 21 years.

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 Page 2

b) Until the ward attains age 25 if the minor was adjudicated a ward for the commission of specified serious and violent offenses.

c) A ward may be confined in CYA past age 25 if an order for further detention is made pursuant to WIC Section 1800 procedures.

3) WIC Section 1770 provides that any ward committed to CYA for any misdemeanor shall be discharged from CYA at the expiration of a two-year period or attains the age of 23, whichever is sooner. (The age 23 provision was declared invalid in People v. Olivas (1976) 17 Cal.3d 236 as were other portions of the WIC CYA commitment scheme.) However, the period of confinement for misdemeanants validly committed to CYA may be continued for further detention is made pursuant to WIC Section 1800 procedures.

4) WIC Section 1800 provides that whenever the Youthful Offender Parole Board (YOPB) determines that the discharge of a person from CYA control would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality, the YOPB must request the prosecuting attorney to petition the committing court for an order directing that the person remain subject to the control of the authority beyond that time.

5) WIC Section 1800 further provides that if the prosecuting attorney does not file the petition for continued detention, he or she shall notify the YOPB. The effect of not filing a petition is that the ward is released at age 25.

6) WIC Section 1801 provides that upon a petition being filed by the prosecuting attorney, the court must notify the subject of the petition and others, as specified, and "afford the person an opportunity to appear in court with the aid of counsel and of process to compel attendance of witnesses and production of evidence."

7) WIC Section 1801 further provides:

a) If after a full hearing, the court and proof beyond a reasonable doubt is of the opinion that discharge of the person would be physically dangerous to the public because of his or her mental or physical deficiency, disorder, or

abnormality, the court must order the CYA to continue the treatment of the person.

- b) If the court is of the opinion that discharge of the person from continued control of the CYA would not be physically dangerous to the public, the court must order the person to be discharged from control of the CYA.

8) As revised in 1984, WIC Section 1801.5 provides that if the

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Page 3

court orders continued confinement, the ward is then allowed a jury trial with a unanimous verdict and proof beyond a reasonable doubt to answer the question, "Is the person physically dangerous to the public because of his mental or physical deficiency, disorder, or abnormality?"

9) WIC Section 1800 commitments are for a duration of up to two years. (WIC Section 1802.)

COMMENTS

1) Purpose . According to the author, "The maximum age at which a juvenile can be kept in the juvenile justice system is upon reaching the age of 25. Yet, often a juvenile, who has done his or her time and remains a serious threat to society due to a psychological problem, may be released back into the community with no supervision.... It is ridiculous to set walking time bombs out into the community, knowing that they could blow up at any time. Apart from the most critical issue, that of public safety, it is unfair to the person released. Clearly, they would be better served by remaining in a secure treatment facility rather than being put into a position to get into more trouble.

"Some of the problems have resulted from individual courts applying different standards of proof in the initial hearing. SB 2187 clarifies the standard to be applied by making it consistent with other similar mental health related proceedings. By clarifying the use of a preponderance standard in the initial hearing, it makes it easier to get these cases to subsequently be heard by a jury."

2) History of WIC Section 1801 Commitment Hearings .

- a) Overview: The age 25 Issue . Under the Juvenile Court Law, a wardship generally ceases at age 21. However, if a minor is sent to CYA for crimes of violence, he or she may be held in custody until he or she reaches 25 years of age. This age 25 release date has no general exceptions. The age 25 issue permeates most discussions of the lack of

incapacitation in juvenile proceedings.

- b) WIC Section 1800 conditions and procedures . In 1963, in recognition that the release of persons at age 25 might threaten public safety, WIC Section 1800, et seq., allows civil commitment of dangerously disordered youthful offenders who may be treated. In essence, WIC Section 1800 procedures provide for a civil commitment procedure.

In In re Gary W., (1971) 5 Cal.3d 296, the California Supreme Court noted that it had repeatedly upheld civil commitment schemes provided various conditions were met from a procedural due process perspective.

Moreover, as a constitutionally guaranteed right, the detainee/committee must receive treatment for his or her problems as a condition of the confinement. Specifically,

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the Supreme Court noted:

As we have noted, the Youth Authority is under an affirmative obligation to provide treatment for the ward's mental or physical abnormality when he is committed pursuant to those sections. Detention of such wards without treatment is unauthorized by statute. Accordingly, any person confined pursuant to a section 1800 commitment but who is not receiving treatment may seek his release through appropriate habeas corpus procedures. (citations omitted.) 5 Cal.3d at 303.

- c) Post-Gary W. case law . In 1975, the California Supreme Court held that in civil commitment proceedings, there must be unanimous jury verdicts and the standard of proof required for continued detention was proof beyond a reasonable doubt. People v. Burnick, (1975) 14 Cal.3d 306, 322. At the time Burnick was decided, WIC Section 1800 did not require proof beyond a reasonable doubt nor did it require jury unanimity.
- d) Vernal D. . In 1983, the Court of Appeal upheld the WIC Section 1800 concept from constitutional attack but wrote into the WIC Section 1800 provisions various due process protections. People v. Superior Court (Vernal D.), (1983) 142 Cal.App.3d 29.

In Vernal D., a minor subjected to WIC Section 1800 confinement challenged the same on several grounds. He convinced the Superior Court held that this contention had merit based on Olivas, supra. The People then sought a writ of mandate in the Court of Appeal to compel the

Superior Court to conduct a WIC Section 1800 hearing.

In the Court of Appeal, Vernal argued that the Superior Court's ruling was correct in holding the WIC Section 1800 procedures invalid in toto. The Court of Appeal disagreed and noted that Olivas, supra, simply held that a ward could not be confined in CYA for any period of time longer than an adult counterpart sentenced to county jail or state prison for the same offense. Vernal D. noted Olivas, supra, had no effect on civil commitment proceedings.

The Court of Appeal further noted in cases subsequent to Olivas, supra, specifically in both In re Moye, (1987) 22 Cal.3d 457, 465 and Conservatorship of Hofferber, (1980) 28 Cal.3d 161, 172, the California Supreme Court had upheld the validity of extended civil commitment proceedings provided due process procedures were met. Indeed, both Moye and Hofferber referred to WIC Section 1800 procedures as civil commitment proceedings.

However, the Court in Vernal D. did note that the ward had a valid point in that the WIC Section 1800 procedures did

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not comport with Burnick as the governing procedures in WIC Section 1800 did not require jury unanimity and WIC Section 1801 language was "murky" on the standard of proof being beyond a reasonable doubt. Therefore, the Court of Appeal followed Burnick in the context of WIC Section 1800 commitments and issued the writ to compel that a WIC Section 1800 hearing be held conditioned on continued confinement based on jury unanimity and proof beyond a reasonable doubt.

- e) AB 2760: the legislative response to Vernal D. In 1984, the Legislature enacted AB 2760 (Areias), Chapter 546, Statutes of 1984, and amended various WIC Section 1800 related sections to conform to Vernal D.'s requirements.

As such, WIC Section 1800, et seq., contains a constitutionally viable - if cumbersome - mechanism for extending confinement for two years beyond the time a ward would otherwise have to be released. The basis for the extension is the determination that a ward would be physically dangerous to the public because of a mental or physical deficiency, disorder, or abnormality.

Post -AB 2760, wards were entitled to two separate hearings on whether they are physically dangerous. Within 10 days from a judicial finding of dangerousness, wards may file a written demand for a jury trial in a superior court. The jury is charged to decide whether the person is physically

dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality. The ward is entitled to all rights guaranteed under the federal and state constitutions in criminal proceedings, and the trial requires a unanimous jury verdict, employing the standard of proof beyond a reasonable doubt. The continued confinement pursuant to this process can occur every two years.

- f) Problems created by AB 2760 . Because appropriate conforming and cross-referencing changes were not made, AB 2760 in essence required proof beyond a reasonable doubt at both a preliminary hearing (probable cause hearing to proceed to a trial) and at the trial itself. In every other context, all that is required to hold the committee/detainee for trial is probable cause, determined by a court alone in a preliminary hearing type proceeding.

As such, AB 2760 created a situation unheard of in all other contexts of current law : (1) proof beyond a reasonable doubt to proceed past a preliminary hearing (which normally requires simple probable cause) and (2) a subsequent jury trial using the identical proof beyond a reasonable doubt.

As the sponsor notes, AB 2760 created entirely redundant and unnecessary hearings not mandated by either state or federal guarantees of due process. Specifically, the

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sponsor notes:

A disjointed series of amendments and judicial interpretations has caused these provisions to evolve in such a way as to require an unparalleled redundancy by which a defendant is now, arguably, entitled to two consecutive trials at which the people must twice establish the same elements beyond a reasonable doubt.

- 5) Corrections to Section WIC 1800 Procedures . This bill corrects essentially all problems created by AB 2760 and assures that WIC Section 1800 will work in an efficient, fair, and constitutional manner so that wards may receive the treatment they need. Specifically, this bill:

- a) Requires a court to order a hearing be held if it determines that a commitment petition, on its face, supports a finding of probable cause.
- b) Retains the notification provisions in current law.

- c) Allows, if the dependent is a minor, a guardian of that minor to appear at the hearing with the aid of counsel and the right to cross-examine experts or witnesses, as specified.
- d) Requires the probable cause hearing to be held within 10 calendar days after the date the order is issued unless the person named in the petition waives this time.
- e) Requires the court, at the probable cause hearing, to receive evidence and "determine whether there is probable cause to believe that discharge of the person would be physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality."
- f) Retains the requirement in current law that if the court determines there is not probable cause, to dismiss the petition and the person shall be discharged from the control of the authority at the time required by current law.
- g) Requires that if the court determines there is probable cause to "order that a trial be conducted to determine whether the person is physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality."
- h) Provides that, if a trial is ordered, the trial must be by jury unless personally waived by the person, after he or she has been fully advised of the constitutional rights being waived and by the prosecuting attorney, in which case trial shall be by the court.
- i) Requires the court or the jury to answer the following question: "Is the person physically dangerous to the public because of his mental or physical deficiency, disorder, or

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abnormality?"

- j) Statutorily mandates that the the person shall be entitled to all rights guaranteed under the federal and state constitutions in criminal proceedings.
- k) Requires in statute a unanimous jury verdict.
- l) Requires proof beyond a reasonable doubt.
- 6) This bill is analogous to procedures for other civil commitments
As noted above, civil commitment procedures for treatment of dangerous individuals is not new in California. For example, since 1986 there has been a civil commitment scheme for mentally disordered offenders (MDOs) and since 1996 for sexually violent predators (SVPs). This bill's provisions are modeled on, and are

analogous to, procedures used for MDOs and SVPs. Both these statutes have been upheld against state and federal due process clause attacks.

7) Suggested Technical Amendment to WIC Sections 606 and 607 for Consideration if There is no Opposition

- a) WIC Section 606 and AB 1392 . Earlier this year, this Committee approved AB 1392 (Scott), which amended WIC Section 606 to conform with various pieces of legislation enacted in 1994. AB 1392 made a necessary change to implement juvenile court provisions allowing new charges to be filed in adult court after a minor has already been found unfit for juvenile court and other conditions have been met.

One statute allows the filing of new charges in adult court after the minor has been found unfit in a prior proceeding and upon different conduct than which underlies the new charges. Another statute appears to require a juvenile court order to allow the filing of new charges in adult court. AB 1392 reconciled these provisions so as to dispense with an unnecessary juvenile court action.

While AB 1392 passed the Assembly, the Senate never assigned AB 1392 (AB 1392 may have been viewed as a "spot bill" which it was not). AB 1392 was subsequently gutted and used for other purposes. However, the WIC Section 606 cross-referencing issue still remains unaddressed.

As this bill deals with unnecessary and duplicative procedures, should not AB 1392's "cleanup provisions" be included in this bill? (Such an amendment is attached.) A cross-reference check has discerned no chaptering issue by the insertion of the WIC Section 606 change in this bill.

- b) WIC Section 607 and SB 2341 failure to cross-reference . In drafting the analysis, staff noticed that WIC Section 607(a) does not specifically state that the Juvenile Court retains jurisdiction

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during the pendency of an arrest warrant.

WIC Section 607(e), enacted by SB 2341 (Lockyer), Chapter 713, Statutes of 1988, states that the court does but there is not a specific cross-reference to that effect. Should this bill include an amendment to WIC Section 607(a) inserting a specific cross-reference to subdivision (e)? (An amendment is attached analysis.)

Staff has conducted a cross-reference check and it appears

that this creates no chaptering issue.

REGISTERED SUPPORT/OPPOSITION :

Support

Los Angeles District Attorney's Office (source)
Attorney General
California District Attorney's Office
California Peace officers Association
California Police Chiefs Association

Opposition

None on File

Analysis prepared by : Judith M. Garvey / apubs / (916) 319-3744

EXHIBIT "A" - SB 2187 AMENDMENTS

At page 2, delete line 1 and insert:

SECTION 1. Section 606 of the Welfare and Institutions Code is amended to read:

606. When a petition has been filed in a juvenile court, the minor who is the subject of the petition shall not thereafter be subject to criminal prosecution based on the facts giving rise to the petition unless the juvenile court finds that the minor is not a fit and proper subject to be dealt with under this chapter and orders that criminal proceedings be resumed or instituted against him or her or the petition is transferred to a court of criminal jurisdiction pursuant to subdivision (b) of Section 707.01 .

SEC. 1.1. Section 607 of the Welfare and Institutions Code is amended to read:

607. (a) The court may retain jurisdiction over any person who is found to be a ward or dependent child of the juvenile court until the ward or dependent child attains the age of 21 years, except as provided in subdivisions (b), (c), ~~and~~ (d), and (e) .

(b) The court may retain jurisdiction over any person who is found to be a person described in Section 602 by reason of

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the commission of any of the offenses listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 until that person attains the age of 25 years if the person was committed to the Department of the Youth

Authority.

(c) The court shall not discharge any person from its jurisdiction who has been committed to the Department of the Youth Authority so long as the person remains under the jurisdiction of the Department of the Youth Authority, including periods of extended control ordered pursuant to Section 1800.

(d) The court may retain jurisdiction over any person described in Section 602 by reason of the commission of any of the offenses listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 who has been confined in a state hospital or other appropriate public or private mental health facility pursuant to Section 702.3 until that person has attained the age of 25 years, unless the court which committed the person finds, after notice and hearing, that the person's sanity has been restored.

(e) The court may retain jurisdiction over any person while that person is the subject of a warrant for arrest issued pursuant to Section 663.

SEC. 1.5. Section 1801 of the Welfare and



COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427



J. TYLER McCAULEY
AUDITOR-CONTROLLER

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Hasmik Yaghobyan states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 23rd day of October, 2000, I served the attached:

Documents: Review of Commission's Draft Staff Analysis, Welfare and Institutions Code Sections 1800, 1801 and 1801.5 County of Los Angeles - Test Claim Chapter 546, Statutes of 1984 and Chapter 267, Statutes of 1998, Extended Commitment- Youth Authority, including a 1 page letter dated 10/23/00, a 1 page declaration of Leonard Kaye, a 8 page narrative, and a 10 page attachment, all pursuant to Review of Commission's Draft Staff Analysis, Welfare and Institutions Code Sections 1800, 1801, and 1801.5, Chapter 546, Statutes of 1984 and Chapter 267, Statutes of 1998, Extended Commitment- Youth Authority, CSM 98-TC-13, now pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

- ☒ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates only - FAX as well as mail of originals.
- ☐ by placing ☐ true copies ☐ original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of October, 2000, at Los Angeles, California.

Hasmik Yaghobyan

Commission on State Mandates

List Date: 05/17/1999

Mailing Information

Mailing List

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# of pages 24	
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Originals in the mail
Post-it brand fax transmittal memo 7671

Claim Number

98-TC-13

Claimant

County of Alameda

Subject

Chap. 546/84 & 267/98

Issue

Extended Commitment - Youth Authority

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Chap. 546/84 & 267/98

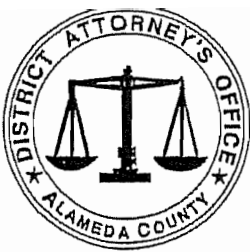
Issue

Extended Commitment - Youth Authority

Mrs. Susan C. Wallace, Executive Officer
Youthful Offender Parole Board

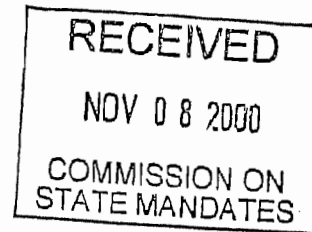
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Alameda County
District Attorney's Office
Thomas J. Orloff, District Attorney

EXHIBIT M



November 2, 2000

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95841

Re: **Extended Commitment – Youth Authority**
98-TC-13
Chapter 546, Statutes of 1984, Chapter 267, Statutes of 1998
Welfare & Institutions Code, Section 1800, 1801 and 1801.5

Dear Ms. Higashi:

We have reviewed the comments of the County of Los Angeles to the Commission's Draft Staff Analysis.

We concur that indigent defense, transportation and custody costs incurred solely to implement this test claim legislation should be found to be reimbursable activities, and as such, incorporated in the final Staff Analysis. We concur that these costs should be reimbursable, as they are in the Sexually Violent Predator program, as well as the Mentally Disordered Offender Extended Commitment Proceedings.

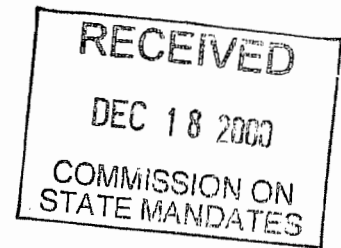
If you have any questions, please do not hesitate to contact me, at 510-272-6280.

Very truly yours,

THOMAS J. ORLOFF
District Attorney

By: Karen Meredith
Assistant District Attorney

cc: Pamela Stone, DMG



PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

TIME: 9:32 a.m.

DATE: Thursday, November 30, 2000

PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

ORIGINAL

Reported By:

DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNETTE PORINI, Chair
Representative of B. TIMOTHY GAGE
Director
State Department of Finance

WILLIAM SHERWOOD, Vice Chair
Representative of PHILIP ANGELIDES
State Treasurer

ALBERT P. "AL" BELTRAMI
Public Member

HEATHER A. HALSEY
Representative of STEVEN A. NISSEN
Acting Director
Office of Planning and Research

JOHN S. LAZAR
City Council Member
Turlock City Council

BRUCE ROBECK
Representative of KATHLEEN CONNELL
State Controller

JOANN E. STEINMEIER
School Board Member
Arcadia Unified School District

--oOo--

COMMISSION STAFF PRESENT

PAULA HIGASHI, Executive Director
PAT HART-JORGENSEN, Chief Counsel
SEAN AVALOS, Staff Counsel
KATHY LYNCH, Staff Counsel
SHIRLEY OPIE, Assistant Executive Director
PIPER RODRIAN, Staff Services Analyst
CAMILLE SHELTON, Staff Counsel

--oOo--

I N D E X

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Item 10 School Site Councils and Brown Act Reform - CSM 4501 and portions of CSM 4469 Kern Union High School District, San Diego Unified School District and County of Santa Clara (<i>This item postponed.</i>)	
Item 11 County Treasury Oversight Committees 96-365-03 County of San Bernardino (<i>This item postponed.</i>)	

1 MS. HIGASHI: Mr. Robeck?

2 MEMBER ROBECK: Aye.

3 MS. HIGASHI: Mr. Sherwood?

4 VICE CHAIR SHERWOOD: Aye.

5 MS. HIGASHI: Ms. Porini?

6 CHAIR PORINI: Aye.

7 MS. HIGASHI: Thank you.

8 MR. KAYE: Thank you.

9 MEMBER BELTRAMI: Two in a row.

10 MEMBER STEINMEIER: We're on a roll here.

11 Let's keep going.

12 MS. HIGASHI: This brings us to item 6.

13 CHAIR PORINI: Mr. Kaye, was it something you
14 said?

15 MR. KAYE: This is the County of Alameda's test
16 claim, so --

17 CHAIR PORINI: All right. Well, we can wait
18 for a minute here.

19 MS. HIGASHI: Item 6 is the Extended Commitment
20 Youth Authority test claim. This item will be presented
21 by Staff Counsel Sean Avalos.

22 MR. AVALOS: Good afternoon.

23 The test claim legislation addresses changes in
24 the procedures for the extended commitment of dangerous
25 juvenile offenders, subject to the jurisdiction of the
26 California Youth Authority.

27 Prior to the 1984 test claim legislation, when
28 the Youthful Offender Parole Board determined that the

1 release of a juvenile offender from the California Youth
2 Authority posed a danger to the public, the Board was
3 required to petition the committing court to extend the
4 juvenile's commitment.

5 Now the test claim legislation specifies that
6 the prosecuting district attorney petition the committing
7 court on behalf of the Youthful Offender Parole Board.

8 All parties, including staff, agree that
9 counties have been reimbursed for the prosecuting
10 district attorney's costs of representing the Youthful
11 Offender Parole Board in extended commitment proceedings.

12 However, claimant and County of Los Angeles
13 argue that counties should also be reimbursed for the
14 public defender, transportation and custody costs.
15 Claimant supports this argument by noting that the
16 Commission has in the past approved these costs of the
17 test claims addressing similar extended commitment
18 proceedings. Staff notes that the test claim cited by
19 claimant, Mentally Disordered Sexual Offenders, Not
20 Guilty by Reason of Insanity and Sexually Violent
21 Predators were brand-new programs enacted after 1975.
22 Reimbursement for public defender, transportation and
23 custody costs under these claims is consistent with
24 Article XIII B, Section 6, of the California Constitution
25 and Government Code Section 17514, which requires the
26 state to reimburse counties for legislative mandates
27 enacted on or behalf January 1, 1975.

28 However, reimbursement for public defender,

1 transportation and custody costs under the present test
2 claim is not consistent with the California Constitution
3 and Government Code Section 17514. The 1984 and 1998
4 test claim statutes did not require counties to incur
5 public defender, custody, or transportation costs. These
6 activities were required by the original 1963 legislation
7 which created the extended commitment program, and the
8 1971 amendment which added the right to trial.

9 And since these activities resulted from
10 legislative mandates enacted before 1975, staff finds
11 that reimbursement for public defender, custody and
12 transportation costs should be denied.

13 Therefore, staff recommends that the Commission
14 partially approve this test claim for the activities
15 listed on listed on page 12 of the staff analysis.

16 Would the parties please state your name for
17 the record?

18 MS. MEREDITH: Karen Meredith, Assistant
19 District Attorney with Alameda County

20 MS. STONE: Pamela Stone on behalf of Alameda
21 County.

22 MR. KAYE: Leonard Kaye, County of Los Angeles.

23 MR. APPS: Jim Apps, Department of Finance.

24 CHAIR PORINI: All right, Ms. Stone, do you
25 want to begin?

26 MS. STONE: Yes, good afternoon, Commission
27 Members.

28 We would like to thank staff very much

1 for its draft staff analysis. We concur in its
2 recommendation.

3 I would like to introduce the Assistant
4 District Attorney Karen Meredith, who is responsible for
5 handling these matters, and I have a couple closing
6 remarks.

7 CHAIR PORINI: All right.

8 MS. MEREDITH: Thank you.

9 It's my understanding by Ms. Stone that I'm
10 here to answer questions of the board pertaining to the
11 proceeding; and also, especially in the area of
12 prosecutorial discretion, as it would affect whether or
13 not the program is mandated.

14 Ultimately, what my belief is, is that once we
15 are requested by the parole board to file a petition, we
16 at that point have no --

17 MEMBER STEINMEIER: Discretion?

18 MS. MEREDITH: All we can do at that point is
19 to receive their request and act upon it. We're
20 obligated by the statute at that point to review what is
21 given to us by the parole board and file a petition if,
22 after our review of the matter, it can be sustained.

23 Ultimately, that review takes -- can lead to
24 further investigation, the hiring of witnesses, or
25 anything that we feel needs to be done in order to
26 sustain the petition.

27 CHAIR PORINI: Questions?

28 I'm sorry, Ms. Stone?

1 MS. STONE: Just a very brief conclusion.

2 The reason why we presented this, was to make
3 sure that your Commission Members understand that the
4 issue of prosecutorial discretion is not equivalent to an
5 optional program as you had in City of Merced with an
6 eminent domain matter. The issue is to make sure that
7 there is adequate evidence before proceeding forward so
8 as not to impose liability for deprivation of civil
9 rights upon the district attorney for proceeding in
10 absence of a colorable case.

11 CHAIR PORINI: Questions from Members?

12 Mr. Kaye?

13 MR. KAYE: Thank you.

14 We, of course, concur with staff and our
15 colleagues in the County of Alameda that the district
16 attorney's cost is clearly mandated and, as such,
17 reimbursable.

18 What I'd like to talk about briefly, is the
19 fact that the costs -- the initial costs prior to 1975 in
20 the Chapter 1693, 1963 statute which established this
21 extended commitment procedure. It is true that it said
22 that indigent defense counsel would be appointed by the
23 superior court judge. It didn't say who was responsible
24 for paying for that.

25 And I'd like to dwell for a moment on this very
26 critical issue, because it's our contention that we
27 clearly were not responsible for paying for it at that
28 point in time.

1 And these changes or costs were not ours. In
2 this regard, Government Code Section 29602 appears to be
3 dispositive. Section 29602 provides that indigent
4 offense, custody and transportation costs are our
5 obligation only if the following conditions are met:
6 Namely, such costs must be incurred in the support -- and
7 I'm quoting -- in the support of persons charged with or
8 convicted of a crime, and committed to the county jail,
9 and for other services in relation to criminal
10 proceedings for which no specific compensation is
11 provided by law," end quote.

12 Of course, the 1963 statute, chapter 1693, does
13 not provide for compensation, and deals only with civil,
14 not criminal, proceedings and with state wards, not
15 county jail inmates. Therefore, the test claim
16 legislation was not our obligation to pay for -- before
17 the test claim legislation it was not our obligation to
18 pay for, just as it is today.

19 And we request that the staff recommendation be
20 amended to provide the required reimbursement for
21 indigent defense, custody and transportation costs
22 imposed under this test claim legislation.

23 Thank you.

24 CHAIR PORINI: Questions?

25 Mr. Beltrami?

26 MEMBER BELTRAMI: Madam Chair.

27 Mr. Kaye, are you saying that in '63, on, that
28 indigent costs were not the county's responsibility?

1 Whose responsibility were they?

2 MR. KAYE: The state's. And in many of these
3 extended commitment proceedings, in that period of
4 time -- the late '70s and so forth -- the state public
5 defender -- like in the MBSO program, was actually
6 appointed by the judge.

7 In other cases, we had large billing programs
8 that would actually invoice the state, in civil matters,
9 where it wasn't a normal criminal proceeding, where it
10 was not our county charge.

11 CHAIR PORINI: Mr. Robeck?

12 MEMBER ROBECK: I'd like staff to comment on
13 that.

14 CHAIR PORINI: Sean?

15 MR. AVALOS: It seems clear to me that this
16 test claim only addresses the duties of the district
17 attorney, therefore, reimbursement is for the costs
18 imposed upon the district attorney and the counties for
19 representing the Youthful Offender Parole Board.

20 Prior to this test, it didn't even address the
21 duties of the Public Defender cost and transportation
22 costs. Those weren't even the subject of this test
23 claim. Even if you were to amend those in to become
24 subject of this test claim, it would predate 1975, which
25 is not even in the universe of mandate reimbursement.

26 CHAIR PORINI: All right, Mr. Apps?

27 MR. APPS: Thank you.

28 We, again -- and this hurts to say this -- we

1 support the staff's analysis.

2 MEMBER STEINMEIER: Did you say pains you to
3 say it? What did you say?

4 CHAIR PORINI: I think we just hit a jackpot
5 here.

6 MEMBER BELTRAMI: You've really mellowed since
7 you've retired.

8 MR. APPS: I don't think we -- no.

9 Seldom have we supported this many test claim
10 approvals in a single hearing. But this is a great
11 claim. We support the staff analysis as currently
12 structured.

13 Thank you.

14 CHAIR PORINI: All right. Questions, comments
15 from Members?

16 Motion?

17 MEMBER LAZAR: I'd make a motion to adopt the
18 staff analysis.

19 VICE CHAIR SHERWOOD: Second.

20 CHAIR PORINI: All right, we have a motion and
21 a second.

22 Discussion?

23 Roll call?

24 MS. HIGASHI: Mr. Beltrami?

25 MEMBER BELTRAMI: Yes.

26 MS. HIGASHI: Ms. Halsey?

27 MEMBER HALSEY: Aye.

28 MS. HIGASHI: Mr. Lazar?

1 MEMBER LAZAR: Yes.

2 MS. HIGASHI: Mr. Robeck?

3 MEMBER ROBECK: Yes.

4 MS. HIGASHI: Mr. Sherwood?

5 VICE CHAIR SHERWOOD: Yes.

6 MS. HIGASHI: Ms. Steinmeier?

7 MEMBER STEINMEIER: Aye.

8 MS. HIGASHI: Ms. Porini?

9 MEMBER PORINI: Aye.

10 Thank you.

11 MS. STONE: Thank you very much.

12 CHAIR PORINI: Thank you.

13 MS. HIGASHI: This brings us to item 8, another
14 test claim.

15 CHAIR PORINI: Let's wait just a moment.

16 MEMBER STEINMEIER: Hang on, we have to change
17 our binders.

18 MS. HIGASHI: You're right. I have to change
19 my binder, too.

20 Okay. We're now up to item 8. For item 8, we
21 have one participant who has not been sworn, so why don't
22 we start with that?

23 CHAIR PORINI: All right, Mr. Bell?

24 MS. HIGASHI: Do you solemnly swear or affirm
25 that the testimony you are about to give is true and
26 correct, based on your own personal knowledge,
27 information or belief?

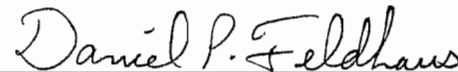
28 MR. BELL: I do.

REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of the cause named in said matter.

In witness whereof, I have hereunto set my hand this 14th day of December 2000.



DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

MINUTES
COMMISSION ON STATE MANDATES
State Capitol, Room 126
Sacramento, California
November 30, 2000
9:30 A.M. - PUBLIC SESSION

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Heather Halsey
Representative of the Director of the Office of Planning and Research
Member Bruce Robeck
Representative of the State Controller
Member Albert Beltrami
Public Member
Member Joann Steinmeier
School Board Member
Member John Lazar
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:32 a.m. All members were present.

APPROVAL OF MINUTES

Item 1 October 26, 2000

Member Beltrami requested one change. At the previous hearing, he had mentioned the County of Sonoma and meant to say the City of Santa Rosa. Paula Higashi, Executive Director of the Commission, indicated that staff would make the correction. Member Sherwood moved for approval of the minutes, as modified. With a second by Member Steinmeier, the minutes were unanimously adopted.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

ADOPTION OF REGULATIONS PURSUANT TO GOVERNMENT CODE SECTION 17527, SUBDIVISION (g)

Item 13 Adoption of Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5 - Applications for Findings of Significant Financial Distress. Articles 1 and 6.5, Amending Sections 1181.2, 1181.3, 1186.5, 1186.51, 1186.52, and 1186.72; Renumbering and Amending Sections 1186.6, 1186.61, and 1186.62; and Adding New Sections 1186.6, 1186.61, and 1186.62, As Modified After Close of Public Comment Period.

With a motion by Member Steinmeier and second by Member Beltrami, the Consent Calendar, consisting of Item 13, was unanimously adopted.

POSTPONED ITEMS

Paula Higashi, Executive Director, confirmed the postponement of Items 9, 10, and 11, Proposed Parameters and Guidelines for *Financial and Compliance Audits* (CSM-4498, 4498A), *School Site Councils* (CSM-4501), and *County Treasury Oversight Committees* (96-365-03).

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

ADOPTION OF PROPOSED STATEMENT OF DECISION BY HEARING OFFICER

- | | |
|--------|---|
| Item 2 | Remanded by the Supreme Court in <i>County of San Diego v. State of California, et al.</i> (1997) 15 Cal.4 th 68, “to determine whether, and by what amount, the statutory standards of care (e.g., Health & Saf. Code, § 1442.5, former subd. (c); Welf. & Inst. Code, §§ 10000, 17000) forced San Diego to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which San Diego is entitled.” - Case No. CSM-R-2046843 and OAH No. N2000020064 |
|--------|---|

Camille Shelton, Staff Counsel, presented this item. She noted that the California Supreme Court had remanded this case back to the Commission to determine whether, and by what amount, the statutory standards of care forced the County of San Diego to incur costs in excess of the state funds provided and to determine statutory remedies to which the County is entitled. Ms. Shelton added that this case only involves San Diego County. The Commission assigned the case to a hearing officer, who recommended in a Proposed Statement of Decision that the Commission dismiss the claim. The parties contend that the hearing officer wrongly applied surplus fund credit. Staff recommended the Commission remand the Proposed Statement of Decision back to the hearing officer for reconsideration in light of the parties’ comments.

Parties were represented as follows: Ramon de la Guardia, Deputy Attorney General, representing the State; and Timothy Barry, Senior Deputy County Counsel, representing the County of San Diego. Mr. Barry introduced Julie Stewart, Sandra McChesney, and John McTighe as witnesses for the County of San Diego.

Ms. Higashi swore in the witnesses for all items.

Mr. De la Guardia explained that the parties agreed on a minor change to one offset that would reduce the numeric amount of the mental health surplus. He did not see the need to remand the decision. He urged the Commission to make the one change for the mental health funding and then adopt the decision of the Administrative Law Judge (ALJ).

Mr. Barry argued that, on remand, the ALJ should have to address all of the factual and legal issues raised in the comments, and not only the mental health issues. He argued that the court has already found the county was compelled to spend the money, and that the scope of the remand was to determine the extent the levels of service provided by the county exceeded the

applicable standards of care. Mr. Barry further contended that some of the ALJ's mathematical calculations were erroneous.

Member Robeck asked if the Commission could remand the decision and leave an open record, or go beyond the scope of the recommendation, in terms of issues. Ms. Shelton responded that the Commission could remand it with any direction to the ALJ. Member Robeck noted his concern that there might be other elements, or factual issues, that have not been considered in this case, given the fact that both sides agree the administrative decision seems to have a substantial, factual hole.

Chairperson Porini noted the Commission's options: 1) adopt the ALJ's decision; 2) deny the decision; 3) modify the decision to correct for errors; 4) remand the decision back to the ALJ for rehearing; or 5) open the record and have the hearing themselves.

Member Steinmeier asked Ms. Shelton if she would modify her recommendation based on this morning's testimony. Ms. Shelton said she would not. She noted that many of the issues raised by the County of San Diego were raised by the ALJ. Further, she thought that the real issue is in the calculation. Member Steinmeier asked if Ms. Shelton would limit the remand to the calculations. Ms. Shelton hesitated to answer because she had not reviewed the record in depth, as had the ALJ. Member Steinmeier agreed with Member Robeck that the ALJ might find other holes in the decision. She was inclined to remand it, not totally open-ended, but to review the comments and modify the decision accordingly. Member Robeck clarified that the Commission would ask the ALJ to reconsider the decision, as opposed to modify the decision, so he could come back with the same decision, if appropriate.

Mr. De la Guardia argued that there was only a small error regarding the surplus of mental health funds, and a technical error regarding some categorical funds, but no real error in the amount. He did not think the errors warranted a reopening of the record. If remanded, he urged the Commission to limit the scope to the one matter. Ms. Shelton clarified that the remand would not include all evidence, but only comments regarding the proposed decision.

Mr. Barry submitted that the error is not small. He noted that Medicus kept copies of the County's records, and those copies are included in the record. Mr. Barry further submitted that the ALJ wrongly concluded that the County had not fully established numbers on the claim because his calculations did not include all of the dollars evidenced. He also argued that the prior year funds alleged to be "left over" were not. Mr. Barry explained that funds are not necessarily spent in the next year and that the record demonstrates that, for 1990-91 claims, a portion of the funds were paid out in 1991-92 and a portion in 1992-93. He contended that, for that reason, you cannot look at the general ledger as a snapshot in time to compare prior year funding versus expenses.

Member Beltrami asked if Mr. Barry's testimony was given to the hearing officer. Mr. Barry replied that the discrepancies between the prior-year funding were in the record. He submitted that the state argued that it was a discrepancy in the numbers and therefore the county could not prove its claim, but the ALJ went a step further and considered it a credit.

Mr. De la Guardia contended that he did argue this in his closing brief, and commented that the expenditures did not match the revenues in the evidence presented by the County. He added that auditors tried to get the information, but the County did not provide it.

Mr. Barry noted that, if the Commission was interested, he had additional comments on a number of other credits given to the state and on the appropriateness of the finding that the County was not compelled to spend the money.

Member Robeck moved the staff recommendation, to remand the proposed decision back to the ALJ for reconsideration in light of the parties' comments. Member Steinmeier seconded the motion. The Chair asked whether the reconsideration was open-ended or limited in scope. Member Robeck replied that the staff recommendation was to reconsider the decision in light of the comments already filed.

Member Beltrami noted his concern about the ALJ's statements regarding HMO contracts. He submitted that, when a local party has used prudent fiscal management, it might not be fair for the Commission to find that the County did well saving money and therefore there is no cost. He wanted the ALJ to discuss that issue. Ms. Shelton noted that that issue was contained in the County of San Diego's comments and so, if remanded in light of the comments, the ALJ would review that issue and make changes, if necessary.

Mr. Barry submitted that, for the purposes of having a complete record, it might be appropriate for the ALJ to address the issue of interest on the claim. Mr. De la Guardia argued that it would be presumptuous unless the ALJ finds a reimbursable mandate.

Chairperson Porini stated that she did not get the sense that the maker of, or seconder of, the motion wished to limit the remand. The motion carried 4-3, with Members Halsey, Sherwood, and Porini voting "No."

TEST CLAIMS CONTINUED FROM OCTOBER 26, 2000

- Item 3 *Animal Adoption* - 98-TC-11
County of Los Angeles, City of Lindsay, Southeast Area Animal Control Authority, and Counties of Fresno and Tulare, Co-Claimants
Civil Code Sections 1815, 1816, 1834, 1834.4, 1845—1847, 2080
Food and Agriculture Code Sections 17005, 17006, 31108, 31752, 31752.5, 31753, 31754, 32001, 32003
Penal Code Sections 597.1 and 599d
Statutes of 1998, Chapter 752
Amended to add: Business and Professions Code Section 4855
Statutes of 1978, Chapter 1314
California Code of Regulations, Title 16, Section 2031 (renumbered Section 2032.3 on May 25, 2000)

Ms. Shelton introduced this item. She noted that the item had been continued from the last hearing to allow written comments to be submitted by Taimie Bryant, who had been unable to testify. Her comments, dated November 17, 2000, were included as Exhibit W. Staff prepared a supplemental analysis, to address the seizure of animals under Penal Code section 597.1.

Parties were represented as follows: Leonard Kaye and Robert Ballenger, representing the County of Los Angeles; Pamela Stone, representing the City of Lindsay and the County of Tulare; Dr. Dena Mangiamiele, representing the San Diego County Animal Control; Hiren

Patel, Deputy Attorney General, and Jim Apps, representing the Department of Finance; and John Humphrey, representing the San Diego County Department of Animal Control.

The Chair requested the comments be brief. Mr. Kaye noted that he was in general agreement with staff, including its supplemental analysis. However, he argued that staff's limitation of the holding period of four days rather than six had no legal basis.

Ms. Stone noted staff's finding that there is no entitlement to reimbursement for the 14-day holding period under Penal Code section 597.1 for seized animals because local agencies have the right to reimbursement by owner redemption or through restitution and criminal conviction. She argued that agencies do not always receive repayment because many owners, particularly in the City of Lindsay or County of Tulare, do not have the resources to redeem animals if seized. She added that, if the animals are euthanized, no costs are recouped. Regarding convictions, Ms. Stone argued that the ultimate issue of restitution lies within the jurisdiction of the trial court, over which local government has no control, so local entities may not receive full reimbursement. She requested the Commission find that local agencies must exercise best efforts to obtain reimbursement, and that those receipts are netted against any costs incurred.

Mr. Patel disagreed with Ms. Stone's suggestion of a "best effort" standard. He noted that Government Code section 17556, subdivision (d), the legal standard, says that if there is a mechanism to recover fees, the activity is not reimbursable. He continued to argue that the test claim legislation is a law of general application because it imposes requirements on both public and private shelters and therefore should not be reimbursable. Mr. Patel submitted that neither staff nor the claimant offered any legal argument to the contrary.

Member Steinmeier asked Ms. Shelton if any proof was provided that the public and private shelters are under the same obligations. Ms. Shelton replied that she disagreed with Mr. Patel's legal argument. She noted that the court held in the *City of Richmond v. Commission on State Mandates* that the Commission must look at the legislation in a broader context. Ms. Shelton maintained that, in the broader context of this case, there is existing law that does not require private entities to pick up stray or abandoned animals.

Mr. Patel replied that the body of law with respect to public and charitable organizations says that they have to comply with their charters, and there has been no discussion of that here. Ms. Shelton noted that what is included in an organization's charter is up to them--there is no state mandate that private shelters include in their charters that they accept stray or abandoned animals.

Member Sherwood agreed with staff and noted his belief that there was an option to enter into a charter. He moved staff's current recommendation. Member Steinmeier seconded the motion. Member Robeck moved, and Member Lazar seconded a motion to amend the recommendation to provide for a six business-day holding period as part of the statute. The amendment was accepted. Member Robeck clarified that his motion was to amend the four business-day finding to allow six days, or four days with additional activities.

Member Beltrami asked Ms. Shelton if she had any response to Ms. Stone's comments on seized animals. Ms. Shelton replied that she disagreed with Ms. Stone, as provided in staff's analysis. She agreed with Mr. Patel that Government Code section 17556, subdivision (d), says that the Commission shall deny a claim for reimbursement if they have the power to

charge offsetting fees, regardless of economic feasibility. Member Beltrami asked if that included reasonability. Ms. Shelton replied that it did not, and again cited the *Connell* case. She added that, even if the court does not order restitution, the owner is still personally liable civilly.

Member Sherwood asked staff to comment on its recommendation of a four-day versus six-day holding period. Ms. Shelton replied that the law requires a minimum of four days, and that staff found that six days was an option. Members Steinmeier and Robeck read the law to require six days and included four plus days as an option.

Member Robeck clarified that his motion was to modify the staff recommendation to provide for a minimum of six business days for the holding period, or four days, plus the specified statutory additional responsibilities (a weekend day, open until 7:00 p.m. on a week night). He added that the only exception was for an institution with three or fewer employees.

Member Robeck agreed the County of Los Angeles' suggested language on the bottom of page 1622, numbers 1, 2, 3, was consistent with his amendment. The motion carried 5-2, with Members Halsey and Porini voting "No."

Item 4 *Emergency Apportionments - 97-TC-14*
Alameda County Office of Education, Claimant
Education Code Sections 41320, 41320.1, 41320.2, 41320.3, 41321,
41322, 41323, 41325, 41326, 41326.1, 41327, 41328
Statutes of 1981, Chapter 70; Statutes of 1987, Chapter 990;
Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter
1256; Statutes of 1990, Chapter 171; Statutes of 1991, Chapter 1213;
Statutes of 1993, Chapters 589 and 924; Statutes of 1994, Chapter 1004;
Statutes of 1995, Chapters 50 and 525

Sean Avalos, Staff Counsel, presented this item. He noted that staff had revised its original recommendation to deny the test claim and had now identified three activities associated with the loans exceeding 200 percent of the requesting school district's fiscal reserves in which county offices are eligible for reimbursement. Staff maintained that the remaining costs incurred as a result of the state-imposed cost shift would not be reimbursable under *City of San Jose* and *El Monte*. Staff further maintained that the test claim legislation does not impose a reimbursable mandated program on school districts because the imposed activities are only after districts voluntarily initiate the process. Staff recommended the Commission partially approve the test claim.

Parties were represented as follows: Keith Petersen, representing the Alameda County Office of Education; and Dan Troy, Lynn Podesto, and Dan Stone, Deputy Attorney General, representing the Department of Finance (DOF).

[Chairperson Porini had to leave the room. Vice Chairperson Sherwood assumed the role of Chair.]

Mr. Petersen submitted that school district loans are mandatory. Citing Education Code section 41325, he contended that the Legislature believed there is some requirement for this funding mechanism. Citing *Richmond*, he argued that there is no ability for a school district to

tax itself locally out of a fiscal crisis. He noted that staff cited the *Madsen* case, and submitted that it is not relevant because it is a case about whether a city can give a gift and not about whether loans are mandatory. Mr. Petersen also cited *Butt*, arguing that the Supreme Court held that the state has an affirmative duty to step in and save a school district to protect the rights of children to attend school. He submitted that staff used a technical finding in that case, that the trial court did not have the power to tell the state which funds to use to bail out the City.

Mr. Petersen further submitted that the administrative activities in the statute associated with implementing the loans are mandatory and reimbursable. He again cited the legislative intent of Education Code section 41325. Mr. Petersen argued that, once the loan begins, the administrative tasks begin, and the costs of performing the tasks are assessed against the district and county office.

Mr. Petersen contended that, even if the Commission decides the loans and subsequent administrative activities, are not mandatory, once the district begins this process, the State Department of Education begins its activities and several duties fall upon the county office, who had no choice in the matter. He acknowledged that staff's revised recommendation recognized some of these tasks, but submitted that county offices should be reimbursed in full since their tasks are not discretionary. Mr. Petersen added that *San Jose* and *El Monte* do not apply because the facts are dissimilar.

Mr. Stone supported staff's original recommendation that the claim should be denied entirely. [Ms. Porini returned and resumed her role as Chair.] Mr. Stone argued that school districts make a discretionary choice to seek a loan from the state, and that poor local decisions created the fiscal crisis. Mr. Stone agreed that *Butt* requires protection of children's rights to education, but argued that it was beside the point. He submitted that the issue is whether the state mandated something, which he submitted it had not. He added that the state took care of its mandate under *Butt* by making the loans available, but also conditioned districts on certain changes to improve local fiscal management.

Mr. Stone noted that county offices of education must bear 40 percent of the cost of the loan if they do not obtain a waiver. He submitted that obtaining a waiver is the same as under Government Code section 17556, subdivision (d), fee authority on behalf of the county. He argued that the waiver is automatic if the county shows compliance with specified statutes, so they should not have to pay anything. Mr. Stone noted that if the county had not been in compliance, that was local discretionary choice and was not reimbursable. He argued that the costs of seeking a waiver is recoverable under section 41328, subdivision (b).

Mr. Stone disagreed with staff that costs associated with the districts' emergency loans of greater than 200 percent of its fiscal reserves are reimbursable. He argued that the activities stem from discretionary actions of the district and county. Mr. Stone submitted that the only way the county can incur costs is if it had not been in compliance with statute and if it does not apply for a waiver. He added that, even if the costs were not the result of local discretion, they are merely a shift of costs between local agencies. He stated that staff noted prior law gave 100 percent responsibility to schools, and now state law had divided up the costs between the two entities. Mr. Stone argued that staff's new recommendation is inconsistent, because

San Jose and *El Monte* prohibit reimbursement for a shift in costs between local agencies. He further submitted that staff's revised analysis would encourage counties to shirk their oversight duties and be ineligible for the waiver and would encourage districts to seek larger loans. Mr. Podesto agreed with Mr. Stone's comments.

Mr. Petersen argued that local agencies or school districts would not consider becoming insolvent 'discretionary.' He further noted that the county office has no power over the district's governing board. He noted that the court in the *Butt* case did not intend that poor fiscal management would be without penalty. Mr. Petersen submitted that choosing a loan amount is not discretionary—districts will ask for the funds they need.

Member Steinmeier asked if it was a discretionary act on the part of the school district that triggers all the other things that would happen. If not, she contended, a lot of things would not happen. She noted that, over the course of time, five of over one thousand districts have become bankrupt. She added that there is disincentive for any school board member or city councilman to claim bankruptcy. Member Steinmeier noted that most districts now have only a three percent reserve, so 200 percent of that is just six percent of a school's budget. She alleged that going bankrupt is not discretionary, and noted that an unforeseen event could send a school into bankruptcy. Member Steinmeier submitted that, if the Commission were to use the "reasonable person" standard, they should find that seeking a loan is not discretionary.

Chairperson Porini disagreed, noting that the plain reading of the statute says "may request." Mr. Petersen cited another provision that he contended said the opposite. Member Sherwood noted that Mr. Petersen had pointed out several things not mentioned in staff's report, and asked if staff considered those items. Mr. Avalos said that the statute Mr. Petersen was speaking of says "required" or "may" and was not a part of this test claim. Further, it predates 1975, where the additional activities were added between 1981 and 1995. Mr. Avalos said he was aware of Mr. Petersen's comments.

Mr. Stone submitted that the provision cited by Mr. Petersen is not inconsistent with the language the Chair read.

Mr. Avalos noted that the *Butt* case was an equal protection case and did not make a ruling on mandates. However, he submitted that the *El Monte* case cites the *Butt* case and distinguishes equal protection from mandate reimbursement. Mr. Avalos therefore argued that the state has the ultimate fiscal responsibility, but for mandate reimbursement purposes, the law separates the two.

Member Robeck contended that overemphasis on the word "may" is a simplistic approach to what is a complex relationship between state and local communities in conducting schools. He submitted that "may apply" must be taken in context. He submitted that, factually, there are instances in which school districts have been in financial distress who have gone to the county rather than the state for a loan, which is permissible. Mr. Petersen clarified that those were short term loans. Member Robeck replied that fiscal distress is fiscal distress, and recognized that it is a very complicated situation determining permissibility and fault.

Member Beltrami asked if school districts could reduce their programs at the local level. Mr. Petersen replied that, based on his experience, there is some discretion. He said that Member Robeck made a good point, and noted that the state mandates collective bargaining,

curriculum, and the length of school day, and they limit the amount of money districts can raise locally by the revenue limit.

Member Beltrami asked if a district could lay off a deputy superintendent, and if a budget could be cut. Mr. Petersen explained that in the *Richmond* case, they were ready to lay off teachers, which is equivalent to not having school. Member Beltrami asked if *Richmond* had laid off any management. Mr. Petersen did not know for a fact. Member Beltrami also asked if school districts are empowered to borrow private funds from banks or anything of that nature. Mr. Petersen stated that the Education Code does not address the issue, but added that there is no chance for an insolvent local agency to obtain private funds other than a gift. He further explained that, because school districts get money only twice a year, there are cash flow problems. Mr. Petersen submitted that districts have to borrow money using "trans" to make payroll on a monthly basis. He added that districts cannot exceed the annual income, so if a district runs out of money, there's no short-term loan because it cannot be paid back.

Member Beltrami asked if, when a district makes a finding of insolvency and applies for the loan, that triggers the administrative changes from the county office. Mr. Petersen replied yes, according to statute. Member Beltrami asked if districts could borrow money without that. Member Steinmeier and Mr. Petersen replied "no." Mr. Petersen added that they are tied together; the statute reads that one follows the other. Member Beltrami asked for a clarification regarding the county office's oversight function, if there was really no control over the district. Mr. Petersen described the county office's duties, and reminded the Commission that these duties were the subject of two test claims that were partially approved. He admitted that Member Steinmeier had made a good point that districts receive numerous letters throughout the year from the county office of education, reminding districts of their fiscal status. He pointed out that districts are independent entities and can do what they want. Member Beltrami acknowledged that it is an oversight.

Mr. Stone added that, whatever the power of the county may be over the local school districts, as long as the county shows it complied with statute, it gets the waiver. Mr. Petersen objected. Mr. Stone asserted that the Department of Education automatically grants waivers if the county can show that it has implemented and complied with sections 42127, et seq. He explained that there is no evidence that a county has in fact complied with and implemented those provisions and been denied a waiver. Chairperson Porini clarified that the State Board of Education made the decision. Member Robeck and Mr. Stone agreed that if the county office has complied, then the waiver shall be granted; the statutory language speaks for itself. Member Steinmeier added that the decision to grant the waiver is still an objective decision to be made by the State Board.

Mr. Petersen noted that the staff recommendation states that the loan application is discretionary but as one of the conditions for reimbursement, requires the county to apply for the waiver, although it is not so stated in statute. He added that the other condition for the waiver is the county office has to show its own fiscal distress.

Member Beltrami asked if schools had a decline in state funding since Proposition 98. Mr. Petersen explained that there are three tests deciding how much a district receives, depending on the condition of the statewide economy. At San Diego Unified, in the late

1980's and early 1990's, the test used was so lean there was not even enough money to maintain current staffing levels, because as enrollment increased, more teachers were hired.

Mr. Troy noted that Proposition 98 is a floor of funding for school districts. He added that the Governor has decided to go well above that level, so it is not a ceiling.

Member Robeck thanked staff for the revised analysis because he thought it represented the reality of how the county office operates relative to school districts in their county who have fiscal distress, and the county's response. He stated his belief that the way the statute was set up and the way it operates is the county has been put in as an agent of the state and given specific new responsibilities, for school districts seeking an emergency apportionment when greater than 200 percent of their reserves. Mr. Podesto commented that taking the point of view that the county should be fully reimbursed for this thwarts the legislative intent that the county offices and all local entities share in the cost of recovery.

Member Halsey moved, and the Chair seconded, a motion to adopt the original staff analysis, totally denying the test claim.

Member Robeck offered a substitute motion to adopt the current staff analysis. Member Steinmeier seconded the motion for discussion. Member Robeck made the following comments: 1) There is a lot that school districts can and should do over time periods; 2) the maneuvering room within the current budget year is severely limited; 3) districts must do many things to make serious changes in their budgets; 4) there are ample warning mechanisms set in place; and 5) school districts, if they heed those warning mechanisms, can back out of trouble. He concluded that, for those reasons, he did not believe that it is a mandate to go for a state apportionment.

Member Steinmeier said she agreed with Member Robeck after AB 1200, but asked if there was a gap between the date of the test claim legislation and AB 1200. Mr. Petersen replied that most of the test claim legislation is AB 1200. Member Steinmeier asked if that was exactly the same time. Mr. Petersen said yes, it was the response to the *Richmond* case.

The Chair asked if there was a permanent second on the substitute motion. Member Steinmeier confirmed there was. The substitute motion to adopt staff's revised analysis failed 3-4, with Members Sherwood, Halsey, Lazar, and Porini voting "No."

A vote was taken on the original motion made by Member Halsey, and seconded by Chairperson Porini, to adopt staff's original analysis to deny the entire claim. The motion carried 5-2, with Members Steinmeier and Robeck voting "No."

[A lunch break was taken.]

Item 7 *Elder Abuse, Law Enforcement Training* - 98-TC-12
City of Newport Beach, Claimant
Penal Code Section 13515
Statutes of 1997, Chapter 444

Kathy Lynch, Staff Counsel, introduced this item. Staff recommended that the Commission approve the test claim for the following activities: 1) the cost to present the one-time, two-hour course in the form of trainer time and necessary materials provided to trainees; and 2) for

salaries, benefits and incidental expenses for each police officer or sheriff to receive the one-time two-hour course, but only in cases where they have already completed 24 hours of continuing education, and must also complete an additional two hours of elder abuse training under the test claim statute.

Parties were represented as follows: Pamela Stone and Glen Everroad, representing the City of Newport Beach; Ken Stoddard, representing the Newport Beach Police Department; and Tom Lutzenberger and Dan Stone, Deputy Attorney General, representing the Department of Finance.

Ms. Stone concurred with staff's analysis. Mr. Stoddard summarized the impact of the test claim legislation on his Department. Mr. Everroad also agreed with staff's determination.

Mr. Stone generally agreed with staff's recommendation. He asked for clarification that completion of the elder abuse training must occur before the new cycle for two-year training begins, so the two hours of training cannot be put towards the new 24-hour requirement. He therefore requested addition of the following language "...and where a new two-year training cycle does not commence until after the deadline for that officer or deputy to complete elder abuse training." Ms. Lynch commented that the language was consistent with staff's analysis. Ms. Stone also agreed with the requested addition.

Mr. Lutzenberger asked for clarification of the costs that would be associated with a trainer and necessary materials. He noted staff's finding that the course had been developed by the Commission on Peace Officer Standards and Training. Patricia Hart Jorgensen, Chief Legal Counsel to the Commission, replied that this issue was appropriate for the Parameters and Guidelines phase. She added that the Parameters and Guidelines would reflect the discussion in staff's analysis that the training program had already been developed and so reimbursement would be limited to training time and assembling materials.

With a motion by Member Beltrami and second by Member Steinmeier, staff's recommendation, as amended, was unanimously approved.

Item 5 *Mentally Disordered Offenders' Extended Commitment Proceedings*
98-TC-09
County of Los Angeles, Claimant
Penal Code Section 2970
Statutes of 1985, Chapter 1418; Statutes of 1986, Chapter 858; Statutes
of 1988, Chapters 657 and 658; Statutes of 1989, Chapter 228; Statutes
of 1991, Chapter 435

Camille Shelton, Staff Counsel, presented this item, which addresses legislation that establishes civil commitment procedures for the continued involuntary treatment of persons with severe mental disorders for one year following their parole termination date. Staff recommended the Commission approve the test claim for the activities outlined in staff's analysis.

Parties were represented as follows: Leonard Kaye, representing the County of Los Angeles; and Jim Apps, representing the Department of Finance.

Mr. Kaye concurred with staff's recommendation. He added for the record that the County had submitted declarations that they had not requested legislative authority to implement

AB 1881, had not instructed the District Attorney to do so on its behalf, nor had it taken a position on the bill.

Member Beltrami asked if any of the County's elected officers ever spoke for the County. Mr. Kaye assumed they might on occasion, but in this case, they clearly were not representing the County.

Mr. Apps also agreed with staff's analysis. He asked the Commission to consider the Department of Finance's November 6, 2000 letter withdrawn, and that the February 1, 1999 letter be considered the Department's official position on the matter.

Member Robeck moved for approval of staff's recommendation. Member Sherwood seconded the motion. The motion carried unanimously.

Item 6 *Extended Commitment, Youth Authority - 98-TC-13*
County of Alameda, Claimant
Statutes of 1984, Chapter 546; Statutes of 1998, Chapter 267

Sean Avalos, Staff Counsel, introduced this item. He noted that all parties agreed that counties have been reimbursed for the prosecuting District Attorney's costs of representing the Youthful Offender Parole Board in extended commitment proceedings. However, the claimant and the County of Los Angeles argued that counties should also be reimbursed for the public defender, transportation and custody costs.

Mr. Avalos noted that the activities performed by the public defender were required by the original 1963 legislation and a 1971 amendment, and therefore are not reimbursable. Staff found that the Commission should partially approve the test claim for the activities listed in staff's analysis.

Parties were represented as follows: Karen Meredith and Pamela Stone, representing Alameda County; Leonard Kaye, representing the County of Los Angeles; and Jim Apps, representing the Department of Finance.

Ms. Stone concurred with staff's recommendation.

Ms. Meredith explained that, if the district attorney's office receives a request, they are statutorily required to act on it. Ms. Stone added that prosecutorial discretion is not equivalent to an optional program. She wanted to ensure that there was adequate evidence so as not to impose liability for deprivation of civil rights upon the District Attorney.

Mr. Kaye submitted that, prior to the test claim legislation, indigent defense, custody, and transportation costs were not the County's responsibility and therefore should be reimbursable. Member Beltrami asked whose responsibility they were. Mr. Kaye alleged they were the state's, and added that in many extended commitment proceedings, the state public defender was appointed by the judge and in other cases the County actually invoiced the state. Member Robeck asked for staff's comment.

Mr. Avalos replied that the Public Defender and transportation costs were not the subject of this test claim. He added that, even if they were amended in, the duties would predate 1975.

Mr. Apps supported staff's recommendation.

With a motion by Member Lazar and a second by Member Sherwood, the staff recommendation was adopted unanimously.

Item 8 *Employee Benefits Disclosure* - CSM-4502, 98-TC-03
Clovis Unified School District, Claimant
Education Code Sections 42140, 42141 and 42412
Statutes of 1994, Chapter 650; Statutes of 1995, Chapter 525; Statutes of 1996, Chapter 1158 and California Department of Education Management Advisories Numbers 95-03 and 95-07

Sean Avalos introduced this item. He noted staff's finding that the activities concerning disclosure requirements for retirement, health and welfare benefits provided to the employees prior to the enactment of the test claim legislation and disclosure requirements for budget revisions are subject to article XIII B, section 6, of the California Constitution, because school districts and county offices of education must continue to provide retirement, health and welfare benefits at least into the terms of the preexisting contract terminated by good faith collective bargaining. Staff further found that the activities concerning the disclosure requirements for self-insurance of workers' compensation benefits are not subject to article XIII B, section 6, because school districts and county offices of education are not required to self-insure workers' compensation benefits.

Mr. Avalos added that, except for performing an actuarial report, all of the test claim activities concerning retirement, health and welfare benefits and budget revisions impose a reimbursable state mandate. Staff therefore recommended the Commission partially approve the test claim.

Parties were represented as follows: Keith Petersen, representing Clovis Unified School District and Jeff Bell, representing the Department of Finance (Mr. Bell was sworn).

Mr. Petersen argued that the disclosure of workers' compensation should be reimbursable. He submitted that, for large governmental agencies, self-insuring can be more cost efficient than buying insurance. He explained that, in the current situation, one district elected to self-insure, and subsequently the Education Code added a section requiring an additional level of disclosure for those who self-insure. Mr. Petersen contended that, just because the district chose to self-insure, it should not prevent reimbursement since the district chose this method before the new requirement and was more cost effective.

Mr. Petersen agreed with staff's finding that collective bargaining contracts in force as of January 1995 cannot be impacted by subsequent legislation. However, he did not find anything in staff's analysis addressing contracts bargained after 1995.

Mr. Avalos replied that he assumed the employees would not bargain away their rights to retirement, health and welfare benefits to the point where disclosure was not required, but if so, it would not be mandate. Mr. Petersen argued that staff's analysis was to the contrary because it says that collective bargaining is a mandate, and that there should be no distinction between pre- and post-1995 requirements. He added that, either way, staff's analysis needed to be amended to address the issue.

Mr. Petersen noted that staff partially agreed with the Department of Finance that, under prior law, school districts were required to produce an actuarial report. He commented that staff

referred to section 475 of the 1994 State Controller's Audit Guide. Mr. Petersen submitted that, for staff's conclusion to work, staff would have to declare that section of the audit guide a mandate. Mr. Avalos responded that the 1994 Audit Guide was addressed in two other test claims. Mr. Petersen asked if staff was declaring the Audit Guide a legal requirement. Ms. Jorgensen replied that the Commission did find that portions of the Audit Guide constitute a state mandate. Mr. Petersen noted that that finding was not cited in this test claim, so staff has no legal basis for its conclusion.

Member Robeck commented that the audit guideline is drawn up with the consent of the Department of Finance, and that the position of the Department of Finance and State Controller's Office has always been that the audit guideline reflects the requirements of current law and does not make law.

Member Sherwood noted that the legal requirement could be based on statutes that existed before 1975.

Mr. Petersen submitted that the ultimate issue is that the Audit Guide is not a Title 5 regulation, it is a manual. He added that it is not quite an executive order, unless the Commission said it was.

Chairperson Porini and Ms. Higashi agreed that this issue had already been before the Commission. Ms. Higashi added that the Commission made reimbursable mandate findings based on some audit guide provisions. Mr. Petersen noted that the Commission had also tossed out advisories they declared were not executive orders. Ms. Jorgensen clarified that those advisories were CDE advisories in a separate test claim.

Member Steinmeier asked if the cost of the actuarial report wiped out the savings benefit of being self-insured. Mr. Petersen replied that, in his experience at San Diego Unified School District years ago, the actuarial report was 25 thousand dollars against hundreds of thousands in savings.

Member Steinmeier noted that it was a business decision, theoretically changeable, unless the district was in JPA, which might require sufficient notice of opting out. She asked how reversible the district's decision was. Mr. Petersen did not know.

Member Beltrami asked if school districts use the State Compensation Insurance Fund. Mr. Petersen was not certain. Member Beltrami asked Mr. Petersen why he thought there was a distinction between the two insurance methods and why there was a reporting requirement for self-insurance. Mr. Petersen assumed that, if a district buys insurance, there is a third party estimating future liabilities, so self-insurance, where the district makes its own estimate, might be worthy of public disclosure.

Mr. Bell argued that all of the costs associated with this test claim result from a local decision to provide an optional benefit and so no state mandate exists.

Member Steinmeier asked if Mr. Avalos would change his proposed language based on Mr. Petersen's comments about post-1995 contracts, or if he thought people would realize that claiming after that was fine, as long as the benefits are not downscaled over time. Mr. Avalos thought it was clear that, whenever the contract is negotiated, those benefits would continue on unless they were negotiated away.

Member Steinmeier commented that, in reality, the contracts are rolled from one to the other and are usually scaled up rather than down. She moved for approval of staff's recommendation.

Member Sherwood asked if the Commission had answered Mr. Petersen's question regarding the Audit Guide. He noted the Department of Finance's contention that the Audit Guide is in accordance with Generally Accepted Accounting Principles (GAAP), which is based on standards provided by FASB 106, which has been in place since 1992. Member Sherwood noted that these are principles, not statutes, in FASB. He added that one could probably operate as a financial entity outside of FASB, but it would pay a high price to do so. He asked the Commission if it needed to address this question in more detail.

The Chair suggested holding the item over to get clarification in these areas. Member Steinmeier asked if the clarification would be limited to the actuarial report. Mr. Avalos asked for direction to staff. The Commission asked staff to answer whether the Audit Guide is an executive order and state mandate.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

ADOPTION OF PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Item 12 *Open Meetings Act* – 98-PGA-08
County of Los Angeles, Requester
Statutes of 1986, Chapter 641

Shirley Opie, Assistant Executive Director, introduced this item. She outlined the three reimbursement methods available in the Claimant's Proposed Parameters and Guidelines, as Modified by Staff. Ms. Opie noted that staff received two late filings. In one, the State Controller's Office suggested amendments to clarify the calculation of indirect costs. Staff incorporated those recommendations into the Parameters and Guidelines. The second filing, from Girard & Vinson, requested the Commission adopt unit time allowances suggested in their correspondence of September 6, 2000. In that letter, they recommended that allowances for school districts with enrollments of 10,000 to 19,999 be increased from 15 minutes to 35 minutes per agenda item, and for districts with less than 10,000 enrolled, allowances be increased from ten minutes to 25 minutes.

Ms. Opie stated that the Commission's regulations encourage the use of uniform costs. Therefore, staff recommended adoption of the Claimant's Proposed Amendments to the Parameters and Guidelines, as Modified by Staff.

Parties were represented as follows: Leonard Kaye, representing the County of Los Angeles; Allan Burdick, representing the California State Association of Counties; Paul Minney, with Girard & Vinson, representing Mandated Cost Systems; and Cedrik Zemitis, representing the Department of Finance.

Mr. Kaye agreed with staff's recommendation. He commented that the development of standard times was done with the cooperation of the all of the parties involved. He noted that

their study to develop the times was limited to actual claims filed with the State Controller's Office. Mr. Kaye submitted that an exacting random sample was selected. He urged the Commission to adopt the times in staff's recommendation because they are fair and were derived using a scientific method.

Mr. Burdick also urged the Commission to take action on the claim today by either adopting staff's recommendation, or including the amendment suggested by Girard & Vinson. He reminded the Commission that they would not be meeting again before January 15, 2001, which is the filing date for annual claims.

Mr. Minney reviewed his comments, which allege that the smaller school districts' standard unit time allowance is too low. He supported unit time allowances, but contended that the claims filed in 1995-96, the year in the study, were filed under overly restrictive guidance of the State Controller. He contended that, that year, claim preparers filed claims much smaller than they felt were probably allowed. The claimants then received clarification regarding this process after the Commission's review of the *Open Meetings Act* Incorrect Reduction Claim (IRC). Therefore, Mr. Minney submitted that this year's fiscal data shows that the average time per agenda increased significantly. He said that, without his suggested amendments, his clients would be forced to file claims using actual costs, which would defeat the costs savings achieved by standard rates.

Mr. Zemitis concurred with staff's recommendation. He was opposed to increasing the time allowance, noting that local entities have several options available.

Member Beltrami asked why there would be a correlation between the number of agenda items and the number of students in a district. Mr. Minney replied that, the larger the district, the larger the administrative body. He added that, in San Diego's IRC process, they submitted that agenda items were generated by several assistant superintendents. Mr. Minney contended that this would result in a much larger process to develop and review agenda item descriptions.

Member Beltrami asked what "per agenda item" means. Mr. Kaye replied that they had originally talked about using "per page", but determined that "per agenda item" was the fairest possible measuring unit to talk about agenda items. Member Beltrami asked if repetitive items and boilerplate language was excluded. Mr. Kaye and Mr. Burdick confirmed that they were.

Ms. Opie stated that the Commission could decide to go with Mr. Minney's suggestion, or could adopt staff's recommendation and amend the Parameters and Guidelines later if the costs claimed end up higher. The Chair asked if claimants have the ability in staff's recommendation to claim actual costs. Ms. Opie replied that they do, but noted that Mr. Minney was correct that, if everyone claimed actual costs, it defeats the purpose of standard times.

Member Sherwood commented that it might be difficult to move ahead with this proposal without having staff take a look at Mr. Minney's filing. Member Beltrami asked why there was such a difference in the number of items claimed under the revised versus the original lists. Mr. Minney again noted the Commission's decision on the San Diego IRC allowing for the involvement of more employees.

Mr. Kaye clarified that the amendment was filed over two years ago, when the 1999-00 data Mr. Minney used did not exist. He noted that the parties agreed to use the 1995-96 data which was the current year at that time. He stated again that the study was based on actual claims, and not on hypothetical claims for actual costs.

Member Robeck commented that this methodology begs of sunseting a particular set of standards and revisiting them at some point in the future. He thought it was inappropriate to try to redo what all of the parties had done, and moved to adopt staff's recommendation. He added that the Commission could always revisit the issue. Member Steinmeier seconded the motion, acknowledging all of the work done by the parties. She noted that Mr. Minney's request was in the 11th hour, but invited him back to modify the Parameters and Guidelines, if he could justify it.

Mr. Minney clarified that he first received EMCN's information at the prehearing conference. He did submit comments in September, which were misinterpreted by staff, but he had been attempting to get a correction up to this point in time.

The staff recommendation was unanimously adopted.

EXECUTIVE DIRECTOR'S REPORT

Item 14 Workload, Scheduling, Local Claims Bill, Next Agenda

Ms. Higashi presented the following in her Executive Director's report:

- *Workload*: Claimants have informed staff that they will be filing between six to 12 new test claims within the next six to eight months. The Chair complimented staff on decreasing the backlog.
- *New Commission Staff*: Ms. Higashi introduced Victoria Soriano, Office Technician and Shannon Similai, Staff Services Analyst.
- *Next Agenda*: The tentative agenda included in the E.D. Report will be modified based on today's actions.
- *Offsite Meeting*: Commission staff will hold its first offsite meeting on December 21, 2000.
- *2001 Hearing Calendar*: The proposed calendar is included in the binders. The first hearing is January 25th. The December hearing is tentative.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.*, Case Number SCV52190, in the Superior Court of the State of California, County of Los Angeles.

2. *County of Sonoma v. Commission on State Mandates, et al.*, Case Number A089524, in the Appellate Court of California, First Appellate District, Division 1.
3. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number GIC 737638, in the Superior Court of the State of California, County of San Diego.
4. *Long Beach Unified School District v. Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.
5. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
6. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number 00CS00866, in the Superior Court of the State of California, County of Sacramento.
7. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC751187, in the Superior Court of the State of California, County of San Diego.
8. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
9. *County of San Bernardino v. Commission on State Mandates, et al.* Case Number SCVSS69731, in the Superior Court of the State of California, County of San Bernardino.
10. *Department of Finance of the State of California v. Commission on State Mandates, et al.*, Case No. 00CS01446, in the Superior Court of the State of California, County of Sacramento.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd.(e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from Personnel Sub-Committee.

Chairperson Porini announced that the Commission would be meeting in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda and Government Code


sections 11126, subdivision (a) and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Porini reported that the Commission had met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda and Government Code sections 11126, subdivision (a) and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no other business, Chairperson Porini adjourned at 2:43 p.m.



PAULA HIGASHI
Executive Director

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COMMISSION ON STATE MANDATES

NOTICE AND AGENDA ¹

State Capitol, Room 126
Sacramento, California

January 25, 2001

9:30 A.M. – Public Session

12:00 NOON – Lunch Break

1:00 P.M. – Reconvene

I. CALL TO ORDER AND ROLL CALL

II. ELECTION OF OFFICERS

Item 1 Election of Chairperson and Vice Chairperson

III. APPROVAL OF MINUTES

Item 2 November 30, 2000

IV. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items with an asterisk, the Executive Director will include the item(s) on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

V. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Items 3-10.

A. TEST CLAIMS

Item 3 *Employee Benefits Disclosure* - CSM-4502, 98-TC-03
Clovis Unified School District, Claimant
Education Code Sections 42140, 42141 and 42412
Statutes of 1994, Chapter 650; Statutes of 1995, Chapter 525; Statutes of 1996, Chapter 1158 and California Department of Education Management
Advisories Numbers 95-03 and 95-07
(Continued from November 30, 2000)

Item 4 *Firearm Prohibition Signs* - 98-TC-17
State Center Community College District, Claimant
Penal Code Section 626.9
Statutes of 1998, Chapter 115

¹ <http://www.csm.ca.gov>

B. ADOPTION OF PROPOSED STATEMENT OF DECISION BY HEARING OFFICER (tentative)

- Item 5 Remanded by the Supreme Court in *County of San Diego v. State of California, et al.* (1997) 15 Cal.4th 68, "to determine whether, and by what amount, the statutory standards of care (e.g., Health & Saf. Code, § 1442.5, former subd. (c); Welf. & Inst. Code, §§ 10000, 17000) forced San Diego to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which San Diego is entitled." - Case No. CSM-R-2046843 and OAH No. N2000020064

C. PROPOSED STATEMENTS OF DECISION

- Item 6* *Animal Adoption* - 98-TC-11
County of Los Angeles, City of Lindsay, Southeast Area Animal Control Authority, and Counties of Fresno and Tulare, Co-Claimants
Civil Code Sections 1815, 1816, 1834, 1834.4, 1845—1847, 2080
Food and Agriculture Code Sections 17005, 17006, 31108, 31752, 31752.5, 31753, 31754, 32001, 32003
Penal Code Sections 597.1 and 599d
Statutes of 1998, Chapter 752
Amended to add: Business and Professions Code Section 4855
Statutes of 1978, Chapter 1314
California Code of Regulations, Title 16, Section 2031 (renumbered Section 2032.3 on May 25, 2000)
- Item 7* *Emergency Apportionments* - 97-TC-14
Alameda County Office of Education, Claimant
Education Code Sections 41320, 41320.1, 41320.2, 41320.3, 41321, 41322, 41323, 41325, 41326, 41326.1, 41327, 41328
Statutes of 1981, Chapter 70; Statutes of 1987, Chapter 990;
Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 171; Statutes of 1991, Chapter 1213;
Statutes of 1993, Chapters 589 and 924; Statutes of 1994, Chapter 1004;
Statutes of 1995, Chapters 50 and 525
- Item 8* *Mentally Disordered Offenders' Extended Commitment Proceedings*
98-TC-09
County of Los Angeles, Claimant
Penal Code Section 2970
Statutes of 1985, Chapter 1418; Statutes of 1986, Chapter 858; Statutes of 1988, Chapters 657 and 658; Statutes of 1989, Chapter 228; Statutes of 1991, Chapter 435, Statutes of 2000, Chapter 324.
- Item 9* *Extended Commitment, Youth Authority* - 98-TC-13
County of Alameda, Claimant
Statutes of 1984, Chapter 546; Statutes of 1998, Chapter 267

- Item 10* *Elder Abuse, Law Enforcement Training - 98-TC-12*
City of Newport Beach, Claimant
Penal Code Section 13515
Statutes of 1997, Chapter 444

VI. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 11* *Financial and Compliance Audits*, CSM No. 4498/4498A
Sweetwater Union High School District and San Diego
County Office of Education, Co-Claimants
Education Code Sections 1040, 14501, 14502, 14503, 14504, 14505,
14506, 14507, 41020, 41020.2, 41020.3, and 41023
Statutes of 1995, Chapter 476, et al.

- Item 12 *County Treasury Oversight Committees - 96-365-03*
County of San Bernardino, Claimant
Government Code Sections 27130 et seq.
Statutes of 1995, Chapter 784; Statutes of 1996, Chapter 156

B. ADOPTION OF PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 13* *Open Meetings Act - 98-PGA-08*
County of Los Angeles, Requester
Statutes of 1986, Chapter 641

C. ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

- Item 14 *School Bus Safety II - 97-TC-22*
Statutes of 1997, Chapter 739 et al
Education Code Sections 39831.3, 38048, 39831.5 and
Vehicle Code Section 22112

D. PROPOSED REGULATORY ACTION

- Item 15* Adoption of 2001 Rulemaking Calendar

VII. EXECUTIVE DIRECTOR'S REPORT (info)

- Item 16 Workload, Scheduling, Local Claims Bill, Next Agenda

VIII. PUBLIC COMMENT

IX. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *Carmel Valley Fire Protection District et al. v. State of California, et al.*, Case Number 5078828, California Supreme Court.
2. *County of San Bernardino v. State of California, et al.*, Case Number B140704 in the Appellate Court of California, Second Appellate District, Division 2.
3. *County of Sonoma v. Commission on State Mandates, et al.*, Case Number A089524, in the Appellate Court of California, First Appellate District, Division 1.
4. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number GIC 737638, in the Superior Court of the State of California, County of San Diego.
5. *Long Beach Unified School District v. Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.
6. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento. (CSM-365-01)
7. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number 00CS00866, in the Superior Court of the State of California, County of Sacramento.
8. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC751187, in the Superior Court of the State of California, County of San Diego.
9. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles. (CSM-96-362-01)
10. *County of San Bernardino v. Commission on State Mandates, et al.* Case Number SCVSS69731, in the Superior Court of the State of California, County of San Bernardino.
11. *Department of Finance of the State of California v. Commission on State Mandates, et al.*, Case Number 00CS01446, in the Superior Court of the State of California, County of Sacramento.
12. *County of San Bernardino v. Joann E. Steinmeier, et al., Commission on State Mandates of the State of California et. al.*, Case Number SCVSS72444, in the Superior Court of the County of San Bernardino. (CSM-4473-A and 4473-B)
13. *Ruberto Green et al. v. Commission on State Mandates*, Case Number 96CS02068, and *Cynthia Bradford et al. v. Commission on State Mandates*, Case Number 96CS02069, in the Superior Court of the County of Sacramento. (SB1033)

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd.(e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee on the selection and appointment of the Chief Legal Counsel (C.E.A. 3) pursuant to Government Code sections 17529 and 19889 et seq. ²

X. REPORT FROM CLOSED EXECUTIVE SESSION

ADJOURNMENT

² Effective January 2, 2001, Pat Hart Jorgensen accepted an offer with the Office of Legislative Counsel, to serve as a Deputy Legislative counsel III.

ITEM 9

PROPOSED STATEMENT OF DECISION PARTIALLY APPROVED TEST CLAIM

Welfare and Institutions Code Sections 1800, 1801 and 1801.5
Statutes of 1984, Chapter 546
Statutes of 1998, Chapter 267

Extended Commitment—Youth Authority

EXECUTIVE SUMMARY

The Commission on State Mandates heard this test claim on November 30, 2000. The test claim legislation makes technical changes to procedures for the extended commitment of dangerous juvenile offenders subject to the jurisdiction of the California Youth Authority (CYA), and requires the Youthful Offender Parole Board (YOPB) to request representation from the prosecuting district attorney. These procedures generally require the following:

- Appointment of the prosecuting district attorney to represent the YOPB in extended commitment proceedings.
- The filing of the petition with the committing court to extended commitment of a dangerous juvenile offender.
- A civil preliminary hearing on the petition for the extended commitment.
- The right to a jury trial, with a unanimous jury verdict finding beyond a reasonable doubt that the juvenile offender poses a danger to the public, before the juvenile offender can be committed.

The Commission, by a vote of 7 to 0, partially approved this test claim.

The Commission concluded that Welfare and Institutions Code section 1800 imposes a reimbursable state-mandated program upon counties within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities performed by the prosecuting attorney:

- Review the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
- Prepare and file petitions with the superior court for the extended commitment of dangerous CYA wards;

- Represent the state in preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards;
- Retain necessary experts, investigators and professionals to prepare for preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards.

The Commission further concludes that costs incurred by counties for indigent representation by public defenders, custody, and transportation are ineligible for reimbursement under section 6, article XIII B of the California Constitution and Government Code section 17514 because these costs resulted from statutes enacted prior to January 1, 1975.

The sole issue before the Commission is whether the Proposed Statement of Decision accurately reflects the vote of the Commission.¹

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Statement of Decision (beginning of page 3), which accurately reflects the Commission's decision.

¹ Title 2, California Code of Regulations, section 1188.1, subdivision (g).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

No. CSM 98-TC-13

Welfare and Institutions Code sections 1800, 1801 and 1801.5, as amended by Statutes of 1984, Chapter 546 and Statutes of 1998, Chapter 267;

Filed on May 10, 1999

By the County of Alameda, Claimant.

Extended Commitment—Youth Authority

PROPOSED STATEMENT OF DECISION
PURSUANT TO GOVERNMENT CODE
SECTION 17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF REGULATIONS,
DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Presented on January 25, 2001)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on November 30, 2000 during a regularly scheduled hearing. Ms. Pamela Stone and Ms. Karen Meredith, appeared for the County of Alameda. Mr. Leonard Kaye, appeared for the County of Los Angeles. Mr. James Apps, appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 7 to 0, partially approved this test claim.

BACKGROUND AND FINDINGS

The test claim legislation makes technical changes to procedures for the extended commitment of dangerous juvenile offenders subject to the jurisdiction of the California Youth Authority (CYA), and requires the Youthful Offender Parole Board (YOPB) to request representation from the prosecuting attorney. Under California law, the CYA may not retain a ward in custody beyond the age of 25.

In 1963, the Legislature established the extended commitment procedure for dangerous juvenile offenders under Welfare and Institutions Code section 1800 et seq.² The procedures authorized the former Youth Authority Board to determine that the discharge of a ward would be physically dangerous to the public due to the individual's mental or physical deficiency, disorder or abnormality, and to initiate a civil process to extend the ward's commitment for an

² All cites will be to the Welfare and Institutions Code unless otherwise noted.

additional two years.³ The due process procedures provided for the action to be filed in the committing court, for parental notification for minors, court appointment of counsel for indigent wards, examination of witnesses and evidence and a full hearing. In 1971, the Legislature amended the original statutory scheme by adding a procedure for persons ordered returned to the CYA to file a written demand that the question of whether he or she is physically dangerous to the public be tried by a jury in the superior court of the committing county. The extended commitment of dangerous CYA wards is not considered penal in nature, but civil. The CYA is under an affirmative duty to provide treatment. If the ward is not dangerous due to a physical or mental condition, or the condition is not treatable, the ward cannot be held beyond his or her release date.⁴

Prior to the 1984 test claim legislation, state law did not specify who should represent the Youth Authority Board and YOPB in extended commitment proceedings. The legislative history indicates that the Attorney General declined to represent the YOPB, maintaining that it was a local responsibility. As a result, the prosecuting district attorney petitioned the committing court on behalf of the CYA.

The test claim legislation amended section 1800 to provide that, if the YOPB determines the discharge of a CYA ward would be physically dangerous to the public due to the individual's mental or physical deficiency, disorder or abnormality, the YOPB shall request the prosecuting district attorney to petition the committing court for an order directing the ward to remain in the custody of the YOPB.⁵

The YOPB's request to the prosecuting district attorney initiates the extended commitment process.

1. Petitioning the Court

The prosecuting district attorney petitions the court to extend the commitment of dangerous CYA wards by submitting a written statement of facts. The written statement supports the YOPB's opinion that the CYA ward poses a danger to the public. If on its face the petition supports a finding of probable cause, then the court is required to order a preliminary hearing.

2. Preliminary Hearing

At the preliminary hearing, the court must find probable cause that, if released, the CYA ward poses a danger to the public. Prior to the 1998 amendment to section 1801, the standard of proof at the preliminary hearing was beyond a reasonable doubt.⁶ The test claim legislation lowered the burden to probable cause.

³ The YOPB may seek the extended commitment of dangerous CYA wards in two-year increments. See section 1802.

⁴ *People v. Gary* (1971) 5 Cal.3d 296, 302.

⁵ The determination of physically dangerous and mental or physical deficiency, disorder or abnormality is subject to a reasonable interpretation. (*People v. Cavanaugh* (1965) 234 Cal.App.2d 316, 323.)

⁶ The test claim legislation included only minor and technical changes to section 1801.

At this hearing, evidence may be presented and witnesses called. If the court makes a finding of probable cause that the CYA ward's release poses a danger to the public, the court is required to order the extended commitment of the ward. If the court makes such an order, by right, the case will then proceed to stage three, a jury trial.

3. Trial

Prior to the 1984 amendment to section 1801.5, it was uncertain whether jury unanimity and proof beyond a reasonable doubt was required to extend the commitment of a dangerous CYA ward.⁷ The 1984 amendment reflects the court's holding in *People v. Vernal D.* (1983) 142 Cal.App.3d 29, which held jury unanimity and proof beyond a reasonable doubt are constitutionally required.

If the court orders the extended commitment of a dangerous CYA ward after a preliminary hearing, the ward has a right to a jury trial unless waived. At the trial the jury affirms or denies the court's extended commitment order by answering the following question: "Is the person physically dangerous to the public because of his or her mental or physical deficiency, disorder or abnormality?"⁸ To affirm the court's order the jury must unanimously decide beyond a reasonable doubt that the CYA ward poses a danger to the public if released.

Claimant's Contentions

Claimant contends that the test claim legislation constitutes a reimbursable state mandated program by shifting the responsibility for petitioning the committing court to the prosecuting attorney, or in practice, the prosecuting district attorney.

Claimant further concurs with County of Los Angeles' position that indigent defense, transportation and custody costs incurred solely to implement this test claim legislation should be found to be reimbursable activities.

Interested Party's Contentions

The County of Los Angeles also submits that in addition to state reimbursement for the prosecuting district attorney's costs, the public defender's costs should be reimbursed by the state. The County of Los Angeles also asserts that counties should be reimbursed for transportation and custody costs of the CYA ward.

Department of Finance's Contentions

The Department of Finance (DOF) agrees with claimant, and finds that the test claim legislation imposes a reimbursable state mandated program.

COMMISSION FINDINGS

In order for a statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does

⁷ The test claim legislation included only minor and technical changes to section 1801.

⁸ Government Code section 1801.5.

not mandate or require local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create an increased or higher level of service over the former required level of service. The California Supreme Court has defined the word “program” subject to article XIII B, section 6, of the California Constitution as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

Finally, the new program or increased level of service must impose “costs mandated by the state” pursuant to Government Code section 17514.⁹

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation constitute a new program or higher level of service and impose costs mandated by the state?
- Are costs for indigent defense, custody, and transportation subject to reimbursement under article XIII B, section 6 of the California Constitution?

These issues are addressed below.

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

Article XIII B, section 6 of the California Constitution states that “whenever the Legislature or any state agency *mandates* a new program or higher level of service *on any local government*, the state shall provide a subvention of funds.” (Emphasis added.)

Thus, in order for a test claim statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does not mandate or require local agencies to perform a task, then article XIII B, section 6 is not triggered. In such a case, compliance with the test claim statute is within the discretion of the local agency.

Section 1800 of the test claim legislation requires the YOPB chairman to request that the prosecuting district attorney petition the committing court to extend the commitment of dangerous CYA wards. However, the test claim legislation does not require the prosecuting district attorney to petition the committing court on the behalf of the YOPB. In fact, the test

⁹ Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

claim legislation states, “[t]he prosecuting attorney shall promptly notify the [YOPB] of a decision not to file a petition.” Furthermore, the legislative history provides that the prosecuting district attorney’s prompt notification would allow the YOPB time to contact the Attorney General’s Office, so it could timely file the petition on YOPB’s behalf.¹⁰ Thus, the prosecuting district attorney’s responsibility to petition the committing court on behalf of the YOPB can be interpreted as optional. If this were the case, the test claim legislation would not be subject to reimbursement under article XIII B.

However, the legislative history also indicates that the Attorney General’s Office has continually declined to file petitions to extend the commitment of dangerous CYA wards on YOPB’s behalf.¹¹ The Attorney General’s Office maintains that it is a local responsibility.¹² As a result, the prosecuting district attorney has always petitioned the committing court on behalf of the YOPB. Thus, the 1984 amendment to section 1800 did nothing more than codify this existing practice.^{13, 14}

Furthermore, the California Supreme Court has held that the prosecuting district attorney has the exclusive authority to prosecute individuals on behalf of the public.¹⁵ This does not mean that the prosecuting district attorney is required to prosecute all individuals committing public offenses. The decision whether or not to prosecute is left to the discretion of the prosecuting district attorney.¹⁶ However, the court in *Kottmeirer v. Municipal Court*, stated that representation by the district attorney is for the benefit of the people, and if a prosecuting district attorney does not prosecute a case involving serious issues of public concern, the prosecuting district attorney would be in gross dereliction of his duty to the people of the state.^{17, 18}

In the present case, the Commission finds that the prosecuting district attorney is faced with two choices: (1) petition the court to extend the commitment of dangerous CYA wards on

¹⁰ Assembly Criminal Law and Public Safety Committee Bill Analysis, dated April 4, 1984.

¹¹ California Youth Authority Bill Analysis, dated March 2, 1984.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Government Code section 17565 states, “If a local agency or school district, at its option, has been incurring cost which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

¹⁵ *People v. Eubanks* (1996) 14 Cal.4th 580, 588-590.

¹⁶ *Ibid.*

¹⁷ *Kottmeirer v. Municipal Court* (1990) 220 Cal.App.3d 602, 609.

¹⁸ The Commission notes that the Court’s statements in *Eubanks* and *Kottmeirer* are in the context of criminal prosecutions. However, the extended commitment process requires the prosecuting district attorney to civilly prosecute dangerous CYA wards, which is similar to criminal prosecutions. Both can result in confinement of the individual. Moreover, the test claim legislation provides the CYA wards facing extended commitment are entitled to all the rights guaranteed under the federal and state constitutions in criminal proceedings. Therefore, the Commission finds that the use of case law surrounding criminal prosecutions is appropriate.

behalf of YOPB; or (2) decline to petition the court on behalf of YOPB, and allow dangerous CYA wards to be released in the community. If the prosecuting district attorney declines to represent the YOPB, the people of that county, and the people of the state, will not have the benefit of representation before the court on an issue of serious concern—whether to release a dangerous CYA ward into the community. The courts have held that this lack of representation by the district attorney is a gross dereliction of duty to the people of the state. Therefore, the Commission finds that the test claim legislation requires the prosecuting district attorney to petition the committing court for the extended commitment of dangerous CYA wards on behalf of the YOPB.

Accordingly, the Commission concludes that the test claim legislation is subject to article XIII B, section 6 of the California Constitution.

Issue 2: Does the test claim legislation constitute a new program or higher level of service and impose costs mandated by the state?

Section 1800 of the test claim statute requires the prosecuting district attorney to represent the YOPB in extended commitment proceedings for dangerous CYA wards. In this regard, the prosecuting district attorney is required to perform the following activities:

- Review the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
- Prepare and file petitions with the superior court;
- Represent the YOPB in the preliminary hearing and civil trial;
- Retain necessary experts, investigators, and professionals for the preliminary hearing and civil trial; and
- Interview potential witnesses for the preliminary hearing and civil trial.

Representing the state in an extended commitment proceeding for a dangerous CYA ward in California is a peculiarly governmental function administered by a local agency as a service to the public. Moreover, the test claim legislation imposes unique requirements upon counties that do not apply generally to all residents and entities of the state. Therefore, the Commission finds that county representation of the YOPB in extended commitment proceedings constitutes a "program" within the meaning of section 6, article XIII B of the California Constitution.¹⁹

Under prior law, the YOPB, like any state agency, was required to request representation from the Attorney General to petition the committing court to extend the commitment of a dangerous CYA ward. However, according to the legislative history, the Attorney General's Office continually declined to file petitions to extend the commitment of dangerous CYA wards and maintained that it is a local responsibility.

The test claim statute now requires the YOPB to request representation from the prosecuting district attorney. Although district attorneys may have represented the YOPB under prior law,

¹⁹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

such representation was voluntary. Government Code section 17565 states, "If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate." Accordingly, the Commission finds that voluntary representation of the YOPB under prior law does not bar reimbursement for costs incurred by prosecuting district attorneys after the operative date of the mandate.

Therefore, the Commission concludes that the section 1800 of the test claim legislation imposes a new program or higher level of service upon prosecuting district attorneys, within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state under Government Code section 17514 for the new activities described above.

Issue 3: Are costs for indigent defense, custody, and transportation subject to reimbursement under article XIII B, section 6, of the California Constitution?

The Claimant and the County of Los Angeles now assert that costs for the public defender representing indigent CYA wards at extended commitment proceedings, and the CYA ward's custody and transportation costs during the extended commitment proceedings should be reimbursed under this test claim. However, the County overlooks the fact that the test claim statutes did not create the extended commitment proceeding. Statutes of 1963, Chapter 1693 established the extended commitment proceeding.

Article XIII B, section 6 of the California Constitution reads in pertinent part:

"Whenever the Legislature... mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the cost of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for...legislative mandates enacted prior to January 1, 1975...."

Government Code section 17514, further specifies in pertinent part:

"“Costs mandated by the state” means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975 ... which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

Under the original enactment, if the CYA ward was unable to provide his or her own counsel, state law required the court to appoint counsel to represent him.²⁰ This requirement remains unaffected by the test claim legislation and is not subject to reimbursement under article XIII B, section 6 and Government Code section 17514 because it was enacted prior to 1975. Likewise, the Commission finds that custody and transportation costs are not reimbursable because counties would have incurred these costs prior to 1975.

²⁰ Section 1801 as added by Statutes of 1963, Chapter 1693.

Although the County cites other test claims to support its contention that public defender, custody and transportation costs should be reimbursed, these claims are distinguishable from the *Extended Commitment – Youth Authority Test Claim*. Each of the test claims cited, *Mentally Disordered Sexual Offenders, Not Guilty by Reason of Insanity, and Sexually Violent Predators*, is based on statutes which were enacted after 1975.

Therefore, the Commission finds that the Claimant and the County of Los Angeles' request for reimbursement of public defender, custody and transportation costs should be denied because these costs are ineligible for reimbursement under article XIII B, section 6 and Government Code section 17514.

Conclusion

Based on the foregoing, the Commission concludes that section 1800 of the test claim legislation imposes a reimbursable state-mandated program upon counties within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities performed by the prosecuting attorney:

- Review the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
- Prepare and file petitions with the superior court for the extended commitment of dangerous CYA wards;
- Represent the state in preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards;
- Retain necessary experts, investigators, and professionals to prepare for preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards.

The Commission further concludes that costs incurred by counties for indigent representation by public defenders, custody, and transportation are ineligible for reimbursement under section 6, article XIII B of the California Constitution and Government Code section 17514 because these costs resulted from statutes enacted prior to January 1, 1975.

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PUBLIC HEARING
COMMISSION ON STATE MANDATES



--o0o--

ORIGINAL

TIME: 9:30 a.m.

DATE: January 25, 2001

PLACE: State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By: YVONNE K. FENNER, CSR License #10909, RPR

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A P P E A R A N C E S

COMMISSION MEMBERS

- ANNETTE PORINI, Chairperson
Representative of the Director of the
Department of Finance
- BILL SHERWOOD, Vice Chairperson
Representative of the State Treasurer
- JOHN HARRIGAN^R
Representative of the State Controller
- HEATHER A. HALSEY
Representative of the Director of the
Office of Planning and Research
- ALBERT BELTRAMI
Public Member
- JOANN STEINMEIER
School Board Member
- JOHN LAZAR
City Counsel Member

COMMISSION STAFF

- PAULA HIGASHI, Executive Director
- CAMILLE SHELTON, Staff Counsel
- KATHY LYNCH, Staff Counsel
- SEAN AVALOS, Staff Counsel

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AGENDA INDEX

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1 CHAIRPERSON PORINI: Opposed?

2 Minutes carry.

3 That takes us to Item No. 3.

4 MS. HIGASHI: Before we go to Item No. 3, I'd
5 like to present the proposed consent calendar. And the
6 proposed consent calendar consists of the following
7 items: Under "Adoption of Proposed Statements of
8 Decision," Item 6, animal adoption test claim; Item 7,
9 emergency apportionments test claim; Item 8, mentally
10 disordered offenders' extended commitment proceedings
11 test claim; Item 9, extended commitment Youth Authority
12 test claim; Item 10, elder abuse law enforcement
13 training test claim.

14 It also consists of adoption of proposed
15 parameters and guidelines for Item 11, financial and
16 compliance audits, and adoption of statewide cost
17 estimate, Item 14, for the school bus safety II test
18 claim.

19 And lastly it includes Item 15, adoption of the
20 2001 rulemaking calendar. We have not heard from any of
21 the parties up to now that there's any desire to oppose
22 the consent calendar.

23 CHAIRPERSON PORINI: Do any of the members wish
24 to move the consent calendar?

25 MR. BELTRAMI: Madame Chair, I just want to --

1 Items 12 and 13 are not on consent?

2 MS. HIGASHI: No. Those items have been --
3 County Treasury Oversight Committees has been postponed,
4 and Item 13 has been canceled.

5 CHAIRPERSON PORINI: Okay. So we'll take up the
6 consent calendar at this point in time.

7 MR. SHERWOOD: Move for approval.

8 MS. STEINMEIER: Second.

9 CHAIRPERSON PORINI: We have a motion and a
10 second to approve the consent calendar. All those in
11 favor indicate with "aye."

12 MULTIPLE SPEAKERS: Aye.

13 CHAIRPERSON PORINI: Opposed?

14 It carries unanimously.

15 So we'll move on then to Item No. 3.

16 MS. HIGASHI: Item No. 3 is the test claim on
17 Employee Benefits Disclosure.

18 Before we start with this item, I'd like for all
19 the witnesses and representatives for all of the
20 remaining items, Items 3, 4, and 5, to please stand,
21 raise their hands for the swearing of witnesses.

22 Do you solemnly swear or affirm that the
23 testimony which you're about to give is true and correct
24 based upon your personal knowledge, information, or
25 belief?

REPORTER'S CERTIFICATE

I hereby certify the foregoing hearing was held at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

In witness whereof, I have hereunto set my hand this 5th day of February, 2001.



Yvonne K. Fenner
Certified Shorthand Reporter
License No. 10909

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126

Sacramento, California

January 25, 2001

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Heather Halsey
Representative of the Director of the Office of Planning and Research
Member John Harrigan
Representative of the State Controller
Member Albert Beltrami
Public Member
Member Joann Steinmeier
School Board Member
Member John Lazar
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:32 a.m.

ELECTION OF OFFICERS

Item 1 Election of Chairperson and Vice Chairperson

Paula Higashi, Executive Director, noted that state law requires the members to elect a chairperson and vice chairperson for the Commission on State Mandates. The Commission's regulations require this election to take place at the January Commission hearing.

Member Sherwood nominated Timothy Gage, the Director of the Department of Finance, as Chair. With a second by Member Halsey, Mr. Gage was unanimously elected. Member Steinmeier nominated Phil Angelides, State Treasurer, as Vice Chair. With a second by Member Porini, Mr. Angelides was unanimously elected.

APPROVAL OF MINUTES

Item 2 November 30, 2000

On motion by Member Beltrami and second by Member Steinmeier, the minutes for the November 30, 2000 Commission hearing were unanimously adopted.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

PROPOSED STATEMENTS OF DECISION

- Item 6 *Animal Adoption* - 98-TC-11
County of Los Angeles, City of Lindsay, Southeast Area Animal Control
Authority, and Counties of Fresno and Tulare, Co-Claimants
Civil Code Sections 1815, 1816, 1834, 1834.4, 1845—1847, 2080
Food and Agriculture Code Sections 17005, 17006, 31108, 31752,
31752.5, 31753, 31754, 32001, 32003
Penal Code Sections 597.1 and 599d
Statutes of 1998, Chapter 752
Amended to add: Business and Professions Code Section 4855
Statutes of 1978, Chapter 1314
California Code of Regulations, Title 16, Section 2031 (renumbered
Section 2032.3 on May 25, 2000
- Item 7 *Emergency Apportionments* - 97-TC-14
Alameda County Office of Education, Claimant
Education Code Sections 41320, 41320.1, 41320.2, 41320.3, 41321,
41322, 41323, 41325, 41326, 41326.1, 41327, 41328
Statutes of 1981, Chapter 70; Statutes of 1987, Chapter 990;
Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter
1256; Statutes of 1990, Chapter 171; Statutes of 1991, Chapter 1213;
Statutes of 1993, Chapters 589 and 924; Statutes of 1994, Chapter 1004;
Statutes of 1995, Chapters 50 and 525
- Item 8 *Mentally Disordered Offenders' Extended Commitment Proceedings*
98-TC-09
County of Los Angeles, Claimant
Penal Code Section 2970
Statutes of 1985, Chapter 1418; Statutes of 1986, Chapter 858; Statutes of
1988, Chapters 657 and 658; Statutes of 1989, Chapter 228; Statutes of
1991, Chapter 435, Statutes of 2000, Chapter 324.
- Item 9 *Extended Commitment, Youth Authority* - 98-TC-13
County of Alameda, Claimant
Statutes of 1984, Chapter 546; Statutes of 1998, Chapter 267
- Item 10 *Elder Abuse, Law Enforcement Training* - 98-TC-12
City of Newport Beach, Claimant
Penal Code Section 13515
Statutes of 1997, Chapter 444

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 11 *Financial and Compliance Audits*, CSM No. 4498/4498A
Sweetwater Union High School District and San Diego
County Office of Education, Co-Claimants
Education Code Sections 1040, 14501, 14502, 14503, 14504, 14505,
14506, 14507, 41020, 41020.2, 41020.3, and 41023
Statutes of 1995, Chapter 476, et al.

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

- Item 14 *School Bus Safety II* - 97-TC-22
Statutes of 1997, Chapter 739 et al
Education Code Sections 39831.3, 38048, 39831.5 and
Vehicle Code Section 22112

PROPOSED REGULATORY ACTION

- Item 15 Adoption of 2001 Rulemaking Calendar

On motion by Member Sherwood and second by Member Steinmeier, the consent calendar, consisting of Items 6, 7, 8, 9, 10, 11, 14, and 15, was unanimously adopted.

Ms. Higashi swore in the witnesses.

TEST CLAIMS

- Item 3 *Employee Benefits Disclosure* - CSM-4502, 98-TC-03
Clovis Unified School District, Claimant
Education Code Sections 42140, 42141 and 42412
Statutes of 1994, Chapter 650; Statutes of 1995, Chapter 525; Statutes of
1996, Chapter 1158 and California Department of Education Management
Advisories Numbers 95-03 and 95-07
(Continued from November 30, 2000)

Sean Avalos, Staff Counsel, introduced this claim. He explained that this claim was heard and continued from the November 30, 2000 hearing. In its supplemental analysis, staff found that school districts and county offices of education are not entitled to state subvention for the disclosure of costs associated with health and welfare benefits provided on or after the test claim legislation's effective date. Staff further found that the State Controller's Audit Guide does not require school districts and county offices of education to produce an actuarial report prepared by a member of the American Academy of Actuaries. Instead, the guide suggests school districts and county offices of education prepare an actuarial report. Accordingly, staff found that the test claim legislation's requirement to produce that report constitutes a new program or higher level of service. Mr. Avalos recommended the Commission partially approve the test claim for the activities listed in staff's supplemental analysis.

Parties were represented as follows: Keith Petersen, representing Clovis Unified School District and Jeff Bell, representing the Department of Finance.

Mr. Petersen disagreed with staff that because districts chose to be self-insured, the subsequent new law is not reimbursable. He distinguished the subject claim from the origins of the 'discretionary test' found in *City of Merced*. In *City of Merced*, the city was not required to condemn commercial property. And the court rejected the city's claim for reimbursement since they had several ways to obtain land for public buildings. Here, the school district is required to obtain worker's compensation insurance, either buying insurance or self-insuring.

Mr. Bell agreed with staff's supplemental analysis that the provision of health benefits for retirees over age 65 is not required in state law. However, he disagreed that any of the costs associated with this claim are state mandated because the provision of benefits is allowed, but not required, by state law. Thus, Mr. Bell argued that, if the district chose to provide benefits to retired employees over age 65, the associated reporting requirements are therefore not reimbursable. He did not agree that a legislative change resulting in reporting requirements for an optional program would convert those reporting requirements on the optional program into state mandated costs. Regarding workers' compensation, he concurred with staff's analysis.

Mr. Avalos noted that his analysis took into consideration the requirements of good-faith collective bargaining, which would not allow termination of benefits to avoid costs associated with disclosure reporting.

Mr. Bell agreed that the issue must be *addressed* in collective bargaining, but that fact did not make the optional benefits a mandate.

Chairperson Porini asked Mr. Bell if he was arguing that the reporting requirements are a downstream, or consequential, activity. Mr. Bell said that he was.

Mr. Petersen argued that staff was compelled by the fact that collective bargaining is a state mandate and that the agreement was a contract enforceable by both parties. The contract was in force before the law and the law should not impair contracts. Mr. Avalos added that, if the benefits were terminated without going through collective bargaining, the district would be liable for unlawful practices under the Rodda Act. Therefore, staff recommended it is required and meets the definition of a mandate.

Member Steinmeier thanked staff for reviewing the process and commented that, in reality, once a contract is in place, the district cannot remove benefits through good faith bargaining. She agreed with staff that districts adding this benefit after the legislation should not be reimbursed for the actuarial report. Regarding workers' compensation, Member Steinmeier agreed with Mr. Petersen that there is no option to provide the insurance, only how to provide it. She submitted that it was a business decision, and noted that, according to staff's analysis, if a business decides to self-insure and has to add in the cost of the report, it might not be their best solution. Member Steinmeier agreed with staff's analysis.

Member Lazar moved the staff analysis. Ms. Higashi clarified that the motion was to adopt the staff analysis and recommendation in the supplemental prepared for this hearing. Member Lazar agreed. With a second by Member Sherwood, the motion carried 5-2. Members Porini and Halsey voted "No."

Item 4 *Firearm Prohibition Signs* - 98-TC-17
State Center Community College District, Claimant
Penal Code Section 626.9
Statutes of 1998, Chapter 115

Kathy Lynch, Staff Counsel, introduced this item. She noted that staff found the statute does not constitute a program, because it merely provides notice of the prohibited criminal conduct to all individuals on noncontiguous property of colleges and universities, as illustrated in the statute's legislative history. Staff further found that the statute is not a program, because it does not impose unique requirements on community colleges, rather it applies equally to public and private colleges and universities. Accordingly, staff found the statute is not subject to article XIII B, section 6 of the California Constitution because it does not carry out the governmental function of providing services to the public or impose unique requirements on local governments that do not apply generally to all residents and entities of the state. Staff therefore recommended that the test claim be denied.

Parties were represented as follows: Keith Petersen, representing the State Center Community College District and Jeff Bell, representing the Department of Finance.

Mr. Petersen asked to continue the hearing of this claim so that it would be heard at the same time as the *Campus Safety Plans* test claim. Ms. Lynch said that she was prepared to move forward and the Commission decided to move forward with the test claim.

Mr. Petersen disagreed with staff's finding that the test claim statute does not constitute a program. He submitted that article XIII B, section 6 requires subvention for a new program or a higher level of service mandated by the state. He argued that, according to *Long Beach*, mandates relating to public schools are considered programs, and therefore do not have to impose higher levels of service. Mr. Petersen also disagreed with staff's finding that the statute does not impose unique requirements upon community colleges, because it also applies to private colleges and universities. He submitted that *Long Beach* says that is irrelevant, because public education is uniquely a public program. He further argued that staff's "educational services" standard does not exist in the legislation or the law and is inconsistent with past Commission decisions pertaining to staff and student safety. He argued that schools are reimbursed for scoliosis screening and immunizations because they are public services, though not educational.

Ms. Lynch argued that firearm prohibition was based on legislative intent to provide notice of criminal conduct to everyone and not just students. She further submitted that the Commission denied the *Minimum Tire Tread* case, which had an almost identical analysis to that done in this case. Ms. Lynch noted that the *County of Los Angeles* case has a two-prong analysis, which staff addressed in this claim. Regarding the legislative history, she noted that Assemblyperson Lempert was concerned about people knowing it is against the law to have firearms on campus. For example, a student living in a dormitory cannot bear arms despite it being their home, and guns cannot be in the back of a vehicle on campus. Regarding uniqueness, Ms. Lynch submitted that 555 colleges and universities are in California, and only approximately 150 are public. She further argued that *Long Beach* is not relevant, because there is no program analysis in that case.

Member Lazar asked if there was any evidence or information on rental or lease agreements in a public dormitory that posted or notified renters that they could not have firearms. Mr. Petersen

clarified that the posting requirement was not just to students living on campus, but to everyone crossing the campus or using the facilities.

Ms. Higashi noted the difficulty of looking at prior decisions as precedent, since some of those decisions are extremely short and some were issued by the Board of Control. She added that there is the additional overlay of different case law depending on the point in time that each decision was issued. For this analysis, staff looked at it from the perspective of how staff is doing its legal analysis today.

Mr. Petersen submitted that he had prepared many of the past test claims and could be called on as an expert if there were any questions.

Member Steinmeier agreed with Mr. Petersen that the Commission had approved test claims that were not uniquely "educational." However, she was moved by the argument that the requirement applies to private schools. Member Sherwood agreed.

Mr. Petersen submitted that the fact the legislation applies to private schools does not disqualify public education as being a program. He added that there are many private schools for grades K-12 and private colleges and that Education Code section 66700 makes community colleges part of the public school secondary system, which bring them into *Long Beach*. He therefore argued that the number of private colleges is no longer an issue.

Ms. Lynch clarified that *Long Beach* dealt with elementary, but not secondary education. She noted that in that situation, the court had already concluded that a program existed. Mr. Petersen explained that Long Beach is a unified school district, grades K-12.

Member Lazar moved to approve the test claim. There was no second.

Member Beltrami asked if Mr. Petersen thought that anything dealing with all schools throughout the state, public and private, is all education and therefore reimbursable, or if there was ever a distinction. Mr. Petersen said that some cases do make that distinction. He explained that the *Minimum Tire Tread* case was actually initially approved by the Commission, which reversed its decision based on the release of an Attorney General's Opinion. In that case, all buses were subject to the requirement. In an industrial relations case involving elevators, the Commission found that providing an elevator is not a public service, it is part of the building. Mr. Petersen argued that this case is different because no one has ever had to post signs.

Member Beltrami was still not convinced that this is a unique situation. Mr. Petersen again cited *Long Beach* and argued that the fact that private K-12 schools exist does not hinder mandate findings for K-12 public schools. He added that the requirement is unique to college campuses.

Member Steinmeier noted that *Long Beach* was about desegregation and asked Mr. Petersen how it applies to private institutions and how it was relevant. Mr. Petersen replied that he did not know, but the Department of Finance had made the argument about private schools several times and lost. He maintained that the whole mandate process falls apart if the Commission bought that argument because nothing would be reimbursed for schools. Member Steinmeier thought this case was different because the legislation specifically applies to public and private schools. She still could not see the relevance of *Long Beach*. Mr. Petersen replied that this case meets the new program test in article XIII B, section 6, and in the *County of Los Angeles*, so the Commission would never get to the uniqueness test. Member Steinmeier understood.

Ms. Lynch submitted that staff recognized both tests and found that the legislation is not unique and it does not constitute a program. Mr. Petersen argued that, to make both tests fail, staff created the "educational services" test. Again he maintained that *Long Beach* says they pass the first test and so there is no need to go to the second test.

Member Halsey moved to adopt staff's analysis. With a second by Member Sherwood, the motion carried 5-2. Members Lazar and Steinmeier voted "No."

ADOPTION OF PROPOSED STATEMENT OF DECISION BY HEARING OFFICER

- Item 5 Remanded by the Supreme Court in *County of San Diego v. State of California, et al.* (1997) 15 Cal.4th 68, "to determine whether, and by what amount, the statutory standards of care (e.g., Health & Saf. Code, § 1442.5, former subd. (c); Welf. & Inst. Code, §§ 10000, 17000) forced San Diego to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which San Diego is entitled."
- Case No. CSM-R-2046843 and OAH No. N2000020064

Ms. Shelton introduced this item. She noted that this item was on remand from the California Supreme Court. The court instructed the Commission to determine whether and by what amount the statutory standards of care forced the County of San Diego to incur costs in excess of the funds provided by the State for the MIA program and to determine the statutory remedies to which the County is entitled. The Commission assigned this case to an Administrative Law Judge (ALJ) to prepare a proposed Statement of Decision. At the last hearing, Ms. Shelton explained that the Commission remanded the decision to the ALJ in light of the written comments filed by both parties. Both parties contended the amount of credit applied by the ALJ to reduce the County's claim was incorrect. Ms. Shelton explained that the ALJ agreed and submitted a revised decision. The ALJ continued to recommend that the Commission dismiss the claim because the County had not established that it was compelled to incur any amount in excess of the funds provided by the State for the MIA program. Ms. Shelton noted that the ALJ still found that the economic risk for the program was transferred to private contract providers and not borne by the County and that the County lacks competent and credible evidence to support its claim. Staff found that the revised decision follows the remand instructions by the Court. Ms. Shelton explained that the County identified a calculation error. Staff agreed and made two modifications to correct the error. Staff recommended the Commission adopt the revised proposed Statement of Decision as the Commission's Statement of Decision.

Parties were represented as follows: Timothy Barry, Senior Deputy County Counsel, representing the County of San Diego and Ramon De la Guardia, Deputy Attorney General, representing the State of California.

Mr. Barry argued that the County was historically funding the program. When it realized it did not have enough money, the Board of Supervisors voted to terminate the program and the County was sued. The court issued an injunction ordering the County to continue the services at the same level. Mr. Barry further argued that, to the extent the County had contracts with private providers, it was fulfilling the State's obligation for those services. Therefore, he argued that those contracts are not relevant.

Mr. Barry further argued that the evidence in the record is that the system would have collapsed but for the County continuing to fund it. Had that happened, he noted that the entire burden

would have fallen on the County under its section 17000 obligation to provide services as a provider of last resort. That burden on the County's limited medical resources, since it has no County hospital, would have been enormous. Mr. Barry therefore disagreed with the ALJ's conclusion that the County had discretion to continue funding the program at the levels it did.

Mr. Barry also disagreed with the ALJ's finding that the State was entitled to a credit for funds received through the State by the County in the form of SLIAG reimbursement. He submitted that the County did not spend that money on CMS programs and so the credit is not warranted. Mr. Barry noted one credit given by the ALJ that the County had already subtracted. He argued that if the credit were given, the same number would be subtracted twice.

Mr. Barry submitted that the ALJ's credit to the State for mental health expenditures or CMS funds expended through the county mental health program is incorrect. He argued that Welfare and Institutions Code section 16704, subdivision (c)(1), specifically authorizes the County to spend CMS funds for mental health services or through the mental health program for CMS-eligible patients, which is what it did. He added that the County's contract with the State expressly provided the County would spend those funds through its mental health program.

Mr. Barry argued that CHIP funding is irrelevant to the issue before the Commission and should not be given as a credit to the State. He added that, if it had been an issue, the County could have accounted for the funding.

Mr. De la Guardia argued that, when the Supreme Court remanded and decided this case, it did not know how the County structured its services, or about the contracts, or the risk shifting. He contended that the issue of the availability of state funds addresses the relevancy of the contracts, which goes to the question of whether the County was required to incur these expenses. He submitted that the County had available funds, but used them someplace else. Though that was permissible, they were not compelled. Regarding the section 17000 population, Mr. De la Guardia noted that the Supreme Court said that the State supplanted the requirement to care for the indigent when they admitted them to Medi-Cal. He noted his agreement with the ALJ's proposed decision, including the mathematical corrections made by staff.

Ms. Shelton commented that the ALJ reviewed the arguments presented by the parties and that the proposed decision addresses them. She explained that the Supreme Court's specific instruction was for the Commission to determine whether and by what amount the statutory standards of care forced the County to incur costs in excess of funds provided by the state, which is consistent with Government Code section 17514. Ms. Shelton noted that the ALJ found that the County has not incurred increased costs because there is no competent or credible evidence to support the claim. If there were increased costs, the economic risk of those costs was shifted to private contract providers. She recommended that the Commission adopt the ALJ's opinion with the mathematical corrections.

Member Beltrami asked if the ALJ considered Mr. Barry's argument about double counting. Mr. Barry was not sure, but thought that the first time the issue was addressed was in his comments on the revised decision. Mr. De la Guardia agreed, but added that the amount is insignificant and not an issue unless the preponderance of evidence finding is not sustained.

In response to Mr. De la Guardia's arguments, Mr. Barry submitted that the County was able to maintain its providers despite the cut in state funding by pledging proceeds from this litigation to the providers. He argued that it would have been improper for the County to use SLIAG funds

on the CMS program. Mr. Barry next explained that he was not talking about the Short-Doyle obligation, rather, he was talking about CMS funds that were paid by the County through its county mental health services program for CMS eligible persons. He argued that the Supreme Court found that those individuals are separate and distinct from the section 17000 population. Mr. Barry maintained that the County had met its burden of proof and contended that the sole issue was whether the County was compelled to spend the money that was spent.

Member Steinmeier moved to adopt the ALJ's decision, with the mathematical corrections. With a second by Member Halsey, the motion was unanimously adopted.

EXECUTIVE DIRECTOR'S REPORT (info)

Item 16 Workload, Scheduling, Local Claims Bill, Next Agenda

Paula Higashi reported the following:

- *Claims Bill.* The annual Local Government Claims Bill should be introduced soon. The deadline to submit bill text to Legislative Counsel is January 26, 2001.
- *Governor's Budget.* This year's budget includes set-asides for mandates. The Statewide Cost Estimate adopted at today's hearing is already covered in the budget.
- *Reports to the Legislature.* Reports on approved and denied mandates were issued at the beginning of the year.
- *Staff Changes.* Jason Rogers, staff's new Information Systems Technician, was introduced. Pat Hart Jorgensen, the Commission's former Chief Legal Counsel, accepted a position with the Legislative Council. Camille Shelton, Staff Counsel, will act as interim Chief Legal Counsel.

**CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS
11126 AND 17526.**

PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *Carmel Valley Fire Protection District et al. v. State of California, et al.*, Case Number 5078828, California Supreme Court.
2. *County of San Bernardino v. State of California, et al.*, Case Number B140704 in the Appellate Court of California, Second Appellate District, Division 2.
3. *County of Sonoma v. Commission on State Mandates, et al.*, Case Number A089524, in the Appellate Court of California, First Appellate District, Division 1.
4. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number GIC 737638, in the Superior Court of the State of California, County of San Diego.
5. *Long Beach Unified School District v. Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.
6. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento. (CSM-365-01)
7. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number 00CS00866, in the Superior Court of the State of California, County of Sacramento.
8. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC751187, in the Superior Court of the State of California, County of San Diego.
9. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles. (CSM-96-362-01)
10. *County of San Bernardino v. Commission on State Mandates, et al.* Case Number SCVSS69731, in the Superior Court of the State of California, County of San Bernardino.
11. *Department of Finance of the State of California v. Commission on State Mandates, et al.*, Case Number 00CS01446, in the Superior Court of the State of California, County of Sacramento.
12. *County of San Bernardino v. Joann E. Steinmeier, et al., Commission on State Mandates of the State of California et. al.*, Case Number SCVSS72444, in the Superior Court of the County of San Bernardino. (CSM-4473-A and 4473-B)

13. *Ruberto Green et al. v. Commission on State Mandates*, Case Number 96CS02068, and *Cynthia Bradford et al. v. Commission on State Mandates*, Case Number 96CS02069, in the Superior Court of the County of Sacramento. (SB1033)

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd.(e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee on the selection and appointment of the Chief Legal Counsel (C.E.A. 3) pursuant to Government Code sections 17529 and 19889 et seq. ¹

Chairperson Porini announced that the Commission would be meeting in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda and Government Code sections 11126, subdivision (a) and 17526, to confer on personnel matters listed on the published notice and agenda.

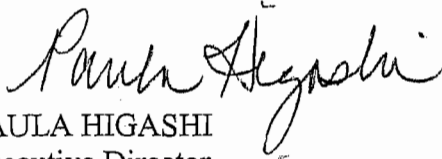
REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Porini reported that the Commission had met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda and Government Code sections 11126, subdivision (a) and 17526, to confer on personnel matters listed on the published notice and agenda.

¹ Effective January 2, 2001, Pat Hart Jorgensen accepted an offer with the Office of Legislative Counsel, to serve as a Deputy Legislative counsel III.

ADJOURNMENT

With no further business, the Chair entertained a motion to adjourn. On motion by Member Beltrami and second by Member Steinmeier, the Commission unanimously adjourned at 12:00 p.m.

A handwritten signature in cursive script, reading "Paula Higashi".

PAULA HIGASHI
Executive Director

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COMMISSION ON STATE MANDATES

200 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
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E-mail: csminfo@csm.ca.gov



January 29, 2001

Mr. Allan Burdick
DMG-Maximus, Inc.
4320 Auburn Boulevard, Suite 2000
Sacramento, California 95841

State Agencies and Interested Parties (See Attached Mailing List)

RE: Statement of Decision
Test Claim: *Extended Commitment—Youth Authority*
CSM 98-TC-13
County of Alameda
Welfare and Institutions Code Sections 1800, 1801 and 1801.5
Statutes of 1984, Chapter 546
Statutes of 1998, Chapter 267

Dear Mr. Burdick:

The Commission on State Mandates adopted the attached Statement of Decision on January 25, 2001. This decision is effective on January 29, 2001.

State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program; approval of a statewide cost estimate; a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller's Office. Following is a description of the responsibilities of all parties and the Commission during the parameters and guidelines phase.

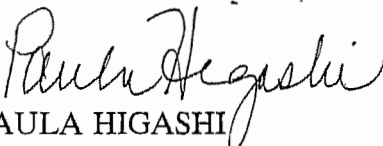
- **Claimant's Submission of Proposed Parameters and Guidelines.** Pursuant to Government Code 17557 and Title 2, CCR sections 1183.1 et seq. (the regulations), the claimant is responsible for submitting proposed parameters and guidelines by February 29, 2001. See Government Code section 17557 and Title 2, CCR sections 1183.1 et seq. for guidance in preparing and filing a timely submission.
- **Review of Proposed Parameters and Guidelines.** Within ten days of receipt of completed proposed parameters and guidelines, the Commission will send copies to the Department of Finance, Office of the State Controller, affected state agencies,

and interested parties who are on the enclosed mailing list. All recipients will be given an opportunity to provide written comments or recommendations to the Commission within 30 days of service. The claimant and other interested parties may submit written rebuttals. See CCR section 1183.11.

- **Adoption of Parameters and Guidelines.** After review of the proposed parameters and guidelines and all comments, Commission staff will recommend the adoption of the claimant's proposed parameters and guidelines or adoption of an amended, modified, or supplemented version of the claimant's original submission. See CCR section 1183.12.

Please contact Ms. Nancy Patton at (916) 323-3562 if you have any questions.

Sincerely,


PAULA HIGASHI
Executive Director

Enclosure: Adopted Statement of Decision

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MAILED: Mail List FAXED: _____
DATE: 1/29 INITIAL: CD
CHRON: _____ FILE: ☒
WORKING BINDER: _____

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Welfare and Institutions Code sections 1800, 1801 and 1801.5, as amended by Statutes of 1984, Chapter 546 and Statutes of 1998, Chapter 267;

Filed on May 10, 1999

By the County of Alameda, Claimant.

No. CSM 98-TC-13

Extended Commitment—Youth Authority

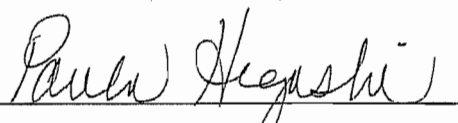
STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2, CALIFORNIA
CODE OF REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on January 25, 2001)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on January 29, 2001.



Paula Higashi, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Welfare and Institutions Code sections 1800, 1801 and 1801.5, as amended by Statutes of 1984, Chapter 546 and Statutes of 1998, Chapter 267;

Filed on May 10, 1999

By the County of Alameda, Claimant.

No. CSM 98-TC-13

Extended Commitment—Youth Authority

STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2, CALIFORNIA
CODE OF REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on January 25, 2001)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on November 30, 2000 during a regularly scheduled hearing. Ms. Pamela Stone and Ms. Karen Meredith, appeared for the County of Alameda. Mr. Leonard Kaye, appeared for the County of Los Angeles. Mr. James Apps, appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 7 to 0, partially approved this test claim.

BACKGROUND AND FINDINGS

The test claim legislation makes technical changes to procedures for the extended commitment of dangerous juvenile offenders subject to the jurisdiction of the California Youth Authority (CYA), and requires the Youthful Offender Parole Board (YOPB) to request representation from the prosecuting attorney. Under California law, the CYA may not retain a ward in custody beyond the age of 25.

In 1963, the Legislature established the extended commitment procedure for dangerous juvenile offenders under Welfare and Institutions Code section 1800 et seq.¹ The procedures authorized the former Youth Authority Board to determine that the discharge of a ward would be physically dangerous to the public due to the individual's mental or physical deficiency, disorder or abnormality, and to initiate a civil process to extend the ward's commitment for an

¹ All cites will be to the Welfare and Institutions Code unless otherwise noted.

additional two years.² The due process procedures provided for the action to be filed in the committing court, for parental notification for minors, court appointment of counsel for indigent wards, examination of witnesses and evidence and a full hearing. In 1971, the Legislature amended the original statutory scheme by adding a procedure for persons ordered returned to the CYA to file a written demand that the question of whether he or she is physically dangerous to the public be tried by a jury in the superior court of the committing county. The extended commitment of dangerous CYA wards is not considered penal in nature, but civil. The CYA is under an affirmative duty to provide treatment. If the ward is not dangerous due to a physical or mental condition, or the condition is not treatable, the ward cannot be held beyond his or her release date.³

Prior to the 1984 test claim legislation, state law did not specify who should represent the Youth Authority Board and YOPB in extended commitment proceedings. The legislative history indicates that the Attorney General declined to represent the YOPB, maintaining that it was a local responsibility. As a result, the prosecuting district attorney petitioned the committing court on behalf of the CYA.

The test claim legislation amended section 1800 to provide that, if the YOPB determines the discharge of a CYA ward would be physically dangerous to the public due to the individual's mental or physical deficiency, disorder or abnormality, the YOPB shall request the prosecuting district attorney to petition the committing court for an order directing the ward to remain in the custody of the YOPB.⁴

The YOPB's request to the prosecuting district attorney initiates the extended commitment process.

1. Petitioning the Court

The prosecuting district attorney petitions the court to extend the commitment of dangerous CYA wards by submitting a written statement of facts. The written statement supports the YOPB's opinion that the CYA ward poses a danger to the public. If on its face the petition supports a finding of probable cause, then the court is required to order a preliminary hearing.

2. Preliminary Hearing

At the preliminary hearing, the court must find probable cause that, if released, the CYA ward poses a danger to the public. Prior to the 1998 amendment to section 1801, the standard of proof at the preliminary hearing was beyond a reasonable doubt.⁵ The test claim legislation lowered the burden to probable cause.

² The YOPB may seek the extended commitment of dangerous CYA wards in two-year increments. See section 1802.

³ *People v. Gary* (1971) 5 Cal.3d 296, 302.

⁴ The determination of physically dangerous and mental or physical deficiency, disorder or abnormality is subject to a reasonable interpretation. (*People v. Cavanaugh* (1965) 234 Cal.App.2d 316, 323.)

⁵ The test claim legislation included only minor and technical changes to section 1801.

At this hearing, evidence may be presented and witnesses called. If the court makes a finding of probable cause that the CYA ward's release poses a danger to the public, the court is required to order the extended commitment of the ward. If the court makes such an order, by right, the case will then proceed to stage three, a jury trial.

3. Trial

Prior to the 1984 amendment to section 1801.5, it was uncertain whether jury unanimity and proof beyond a reasonable doubt was required to extend the commitment of a dangerous CYA ward.⁶ The 1984 amendment reflects the court's holding in *People v. Vernal D.* (1983) 142 Cal.App.3d 29, which held jury unanimity and proof beyond a reasonable doubt are constitutionally required.

If the court orders the extended commitment of a dangerous CYA ward after a preliminary hearing, the ward has a right to a jury trial unless waived. At the trial the jury affirms or denies the court's extended commitment order by answering the following question: "Is the person physically dangerous to the public because of his or her mental or physical deficiency, disorder or abnormality?"⁷ To affirm the court's order the jury must unanimously decide beyond a reasonable doubt that the CYA ward poses a danger to the public if released.

Claimant's Contentions

Claimant contends that the test claim legislation constitutes a reimbursable state mandated program by shifting the responsibility for petitioning the committing court to the prosecuting attorney, or in practice, the prosecuting district attorney.

Claimant further concurs with County of Los Angeles' position that indigent defense, transportation and custody costs incurred solely to implement this test claim legislation should be found to be reimbursable activities.

Interested Party's Contentions

The County of Los Angeles also submits that in addition to state reimbursement for the prosecuting district attorney's costs, the public defender's costs should be reimbursed by the state. The County of Los Angeles also asserts that counties should be reimbursed for transportation and custody costs of the CYA ward.

Department of Finance's Contentions

The Department of Finance (DOF) agrees with claimant, and finds that the test claim legislation imposes a reimbursable state mandated program.

COMMISSION FINDINGS

In order for a statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does

⁶ The test claim legislation included only minor and technical changes to section 1801.

⁷ Government Code section 1801.5.

not mandate or require local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create an increased or higher level of service over the former required level of service. The California Supreme Court has defined the word “program” subject to article XIII B, section 6, of the California Constitution as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

Finally, the new program or increased level of service must impose “costs mandated by the state” pursuant to Government Code section 17514.⁸

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation constitute a new program or higher level of service and impose costs mandated by the state?
- Are costs for indigent defense, custody, and transportation subject to reimbursement under article XIII B, section 6 of the California Constitution?

These issues are addressed below.

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

Article XIII B, section 6 of the California Constitution states that “whenever the Legislature or any state agency *mandates* a new program or higher level of service *on any local government*, the state shall provide a subvention of funds.” (Emphasis added.)

Thus, in order for a test claim statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does not mandate or require local agencies to perform a task, then article XIII B, section 6 is not triggered. In such a case, compliance with the test claim statute is within the discretion of the local agency.

Section 1800 of the test claim legislation requires the YOPB chairman to request that the prosecuting district attorney petition the committing court to extend the commitment of dangerous CYA wards. However, the test claim legislation does not require the prosecuting district attorney to petition the committing court on the behalf of the YOPB. In fact, the test

⁸ Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

claim legislation states, “[t]he prosecuting attorney shall promptly notify the [YOPB] of a decision not to file a petition.” Furthermore, the legislative history provides that the prosecuting district attorney’s prompt notification would allow the YOPB time to contact the Attorney General’s Office, so it could timely file the petition on YOPB’s behalf.⁹ Thus, the prosecuting district attorney’s responsibility to petition the committing court on behalf of the YOPB can be interpreted as optional. If this were the case, the test claim legislation would not be subject to reimbursement under article XIII B.

However, the legislative history also indicates that the Attorney General’s Office has continually declined to file petitions to extend the commitment of dangerous CYA wards on YOPB’s behalf.¹⁰ The Attorney General’s Office maintains that it is a local responsibility.¹¹ As a result, the prosecuting district attorney has always petitioned the committing court on behalf of the YOPB. Thus, the 1984 amendment to section 1800 did nothing more than codify this existing practice.^{12, 13}

Furthermore, the California Supreme Court has held that the prosecuting district attorney has the exclusive authority to prosecute individuals on behalf of the public.¹⁴ This does not mean that the prosecuting district attorney is required to prosecute all individuals committing public offenses. The decision whether or not to prosecute is left to the discretion of the prosecuting district attorney.¹⁵ However, the court in *Kottmeirer v. Municipal Court*, stated that representation by the district attorney is for the benefit of the people, and if a prosecuting district attorney does not prosecute a case involving serious issues of public concern, the prosecuting district attorney would be in gross dereliction of his duty to the people of the state.^{16, 17}

In the present case, the Commission finds that the prosecuting district attorney is faced with two choices: (1) petition the court to extend the commitment of dangerous CYA wards on

⁹ Assembly Criminal Law and Public Safety Committee Bill Analysis, dated April 4, 1984.

¹⁰ California Youth Authority Bill Analysis, dated March 2, 1984.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Government Code section 17565 states, “If a local agency or school district, at its option, has been incurring cost which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

¹⁴ *People v. Eubanks* (1996) 14 Cal.4th 580, 588-590.

¹⁵ *Ibid.*

¹⁶ *Kottmeirer v. Municipal Court* (1990) 220 Cal.App.3d 602, 609.

¹⁷ The Commission notes that the Court’s statements in *Eubanks* and *Kottmeirer* are in the context of criminal prosecutions. However, the extended commitment process requires the prosecuting district attorney to civilly prosecute dangerous CYA wards, which is similar to criminal prosecutions. Both can result in confinement of the individual. Moreover, the test claim legislation provides the CYA wards facing extended commitment are entitled to all the rights guaranteed under the federal and state constitutions in criminal proceedings. Therefore, the Commission finds that the use of case law surrounding criminal prosecutions is appropriate.

behalf of YOPB; or (2) decline to petition the court on behalf of YOPB, and allow dangerous CYA wards to be released in the community. If the prosecuting district attorney declines to represent the YOPB, the people of that county, and the people of the state, will not have the benefit of representation before the court on an issue of serious concern—whether to release a dangerous CYA ward into the community. The courts have held that this lack of representation by the district attorney is a gross dereliction of duty to the people of the state. Therefore, the Commission finds that the test claim legislation requires the prosecuting district attorney to petition the committing court for the extended commitment of dangerous CYA wards on behalf of the YOPB.

Accordingly, the Commission concludes that the test claim legislation is subject to article XIII B, section 6 of the California Constitution.

Issue 2: Does the test claim legislation constitute a new program or higher level of service and impose costs mandated by the state?

Section 1800 of the test claim statute requires the prosecuting district attorney to represent the YOPB in extended commitment proceedings for dangerous CYA wards. In this regard, the prosecuting district attorney is required to perform the following activities:

- Review the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
- Prepare and file petitions with the superior court;
- Represent the YOPB in the preliminary hearing and civil trial;
- Retain necessary experts, investigators, and professionals for the preliminary hearing and civil trial; and
- Interview potential witnesses for the preliminary hearing and civil trial.

Representing the state in an extended commitment proceeding for a dangerous CYA ward in California is a peculiarly governmental function administered by a local agency as a service to the public. Moreover, the test claim legislation imposes unique requirements upon counties that do not apply generally to all residents and entities of the state. Therefore, the Commission finds that county representation of the YOPB in extended commitment proceedings constitutes a "program" within the meaning of section 6, article XIII B of the California Constitution.¹⁸

Under prior law, the YOPB, like any state agency, was required to request representation from the Attorney General to petition the committing court to extend the commitment of a dangerous CYA ward. However, according to the legislative history, the Attorney General's Office continually declined to file petitions to extend the commitment of dangerous CYA wards and maintained that it is a local responsibility.

The test claim statute now requires the YOPB to request representation from the prosecuting district attorney. Although district attorneys may have represented the YOPB under prior law,

¹⁸ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

such representation was voluntary. Government Code section 17565 states, "If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate." Accordingly, the Commission finds that voluntary representation of the YOPB under prior law does not bar reimbursement for costs incurred by prosecuting district attorneys after the operative date of the mandate.

Therefore, the Commission concludes that the section 1800 of the test claim legislation imposes a new program or higher level of service upon prosecuting district attorneys, within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state under Government Code section 17514 for the new activities described above.

Issue 3: Are costs for indigent defense, custody, and transportation subject to reimbursement under article XIII B, section 6, of the California Constitution?

The Claimant and the County of Los Angeles now assert that costs for the public defender representing indigent CYA wards at extended commitment proceedings, and the CYA ward's custody and transportation costs during the extended commitment proceedings should be reimbursed under this test claim. However, the County overlooks the fact that the test claim statutes did not create the extended commitment proceeding. Statutes of 1963, Chapter 1693 established the extended commitment proceeding.

Article XIII B, section 6 of the California Constitution reads in pertinent part:

"Whenever the Legislature... mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the cost of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for...legislative mandates enacted prior to January 1, 1975...."

Government Code section 17514, further specifies in pertinent part:

"“Costs mandated by the state” means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975 ... which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

Under the original enactment, if the CYA ward was unable to provide his or her own counsel, state law required the court to appoint counsel to represent him.¹⁹ This requirement remains unaffected by the test claim legislation and is not subject to reimbursement under article XIII B, section 6 and Government Code section 17514 because it was enacted prior to 1975. Likewise, the Commission finds that custody and transportation costs are not reimbursable because counties would have incurred these costs prior to 1975.

¹⁹ Section 1801 as added by Statutes of 1963, Chapter 1693.

Although the County cites other test claims to support its contention that public defender, custody and transportation costs should be reimbursed, these claims are distinguishable from the *Extended Commitment – Youth Authority Test Claim*. Each of the test claims cited, *Mentally Disordered Sexual Offenders, Not Guilty by Reason of Insanity, and Sexually Violent Predators*, is based on statutes which were enacted after 1975.

Therefore, the Commission finds that the Claimant and the County of Los Angeles' request for reimbursement of public defender, custody and transportation costs should be denied because these costs are ineligible for reimbursement under article XIII B, section 6 and Government Code section 17514.

Conclusion

Based on the foregoing, the Commission concludes that section 1800 of the test claim legislation imposes a reimbursable state-mandated program upon counties within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities performed by the prosecuting attorney:

- Review the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
- Prepare and file petitions with the superior court for the extended commitment of dangerous CYA wards;
- Represent the state in preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards;
- Retain necessary experts, investigators, and professionals to prepare for preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards.

The Commission further concludes that costs incurred by counties for indigent representation by public defenders, custody, and transportation are ineligible for reimbursement under section 6, article XIII B of the California Constitution and Government Code section 17514 because these costs resulted from statutes enacted prior to January 1, 1975.

Commission on State Mandates

List Date: 05/17/1999

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Mailing List

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Chap. 546/84 & 267/98

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Extended Commitment - Youth Authority

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Claim Number

98-TC-13

Claimant

County of Alameda

Subject

Chap. 546/84 & 267/98

Issue

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COMMISSION ON STATE MANDATES

NOTICE AND AGENDA ¹

State Capitol, Room 126
Sacramento, California

May 24, 2001

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 April 26, 2001

III. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items, the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Items 2-4.

A. TEST CLAIMS

Item 2 *Brown Act Reform* - CSM-4469
City of Newport Beach, Claimant
Statutes of 1993, Chapter 1136, 1137, and 1138
Statutes of 1994, Chapter 32

B. INCORRECT REDUCTION CLAIMS

Item 3 *Graduation Requirements* – CSM - 4435-I-03, 4435-I-05, 4435-I-07 to 12
Palos Verdes Peninsula Unified School District, Sweetwater Union High School District, Vista Unified School District, San Luis Coastal Unified School District, Lompoc Unified School District, Huntington Beach Unified School District, Fresno Unified School District, Santa Monica-Malibu Unified School District, Claimants
Education Code Section 51225.3, Statutes of 1983, Chapter 498

C. ADOPTION OF PROPOSED STATEMENT OF DECISION – INCORRECT REDUCTION CLAIM

Item 4* *Graduation Requirements*, CSM 4435-I-04
San Jose Unified School District, Claimant
Education Code Section 51225.3, Statutes of 1983, Chapter 498

¹ <http://www.csm.ca.gov>

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 5 *County Treasury Oversight Committees* - 96-365-03
County of San Bernardino, Claimant
Government Code Sections 27130 et seq.
Statutes of 1995, Chapter 784; Statutes of 1996, Chapter 156
- Item 6* *Mentally Disordered Offenders' Extended Commitment Proceedings*
98-TC-09
County of Los Angeles, Claimant
Penal Code Section 2970
Statutes of 1985, Chapter 1418; Statutes of 1986, Chapter 858; Statutes of 1988, Chapters 657 and 658; Statutes of 1989, Chapter 228; Statutes of 1991, Chapter 435, Statutes of 2000, Chapter 324.
- Item 7* *Extended Commitment, Youth Authority* - 98-TC-13
County of Alameda, Claimant
Statutes of 1984, Chapter 546; Statutes of 1998, Chapter 267
- Item 8* *Elder Abuse, Law Enforcement Training* - 98-TC-12
City of Newport Beach, Claimant
Penal Code Section 13515
Statutes of 1997, Chapter 444

B. ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

- Item 9* *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* - 97-TC-05 (tentative)
County of Los Angeles, Claimant
Government Code Section 7576
Statutes of 1996, Chapter 654
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60000-60610
California Department of Mental Health Information Notice Number 86-29

VI. EXECUTIVE DIRECTOR'S REPORT (info)

- Item 10 Workload, Legislation, Next Agenda

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *Carmel Valley Fire Protection Dist. v. State of California, et al.*, Case Number S078828, California Supreme Court.
2. *County of San Bernardino v. State of California, et al.*, Case Number B140704 in the Appellate Court of California, Second Appellate District, Division 2.
3. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number GIC 737638, in the Superior Court of the State of California, County of San Diego.
4. *Department of Finance v. Commission on State Mandates, et al.*, Case Number 00CS01446, in the Superior Court of the State of California, County of Sacramento.
5. *Long Beach Unified School District v. Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.
6. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
7. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number C037645, in the Court of Appeal, Third Appellate District.
8. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC751187, in the Superior Court of the State of California, County of San Diego.
9. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
10. *County of San Bernardino v. Commission on State Mandates, et al.* Case Number SCVSS69731, in the Superior Court of the State of California, County of San Bernardino.
11. *County of San Bernardino v. Joann E. Steinmeier, et al., Commission on State Mandates of the State of California et al.*, Case Number SCVSS72444, in the Superior Court of the State of California, County of San Bernardino.
12. *County of San Diego v. Commission on State Mandates, et al.*, Case Number GIC762953, in the Superior Court of the State of California, County of San Diego.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee on the selection and appointment of the Chief Legal Counsel (C.E.A. 3) pursuant to Government Code sections 17529 and 19889 et seq. and the evaluation of the Executive Director.

REPORT FROM CLOSED EXECUTIVE SESSION

ADJOURNMENT

WORKSHOP

DEVELOPMENT OF REGULATIONS TO IMPLEMENT AB 1679

May 24, 2001

2:00 to 3:00 PM.

**COMMISSION ON STATE MANDATES
CONFERENCE ROOM
980 NINTH STREET, SUITE 300
SACRAMENTO**

For information, contact Paula Higashi, Executive Director, at (916) 323-3562.

ITEM 7

Staff Analysis Claimant's Proposed Parameters and Guidelines, As Modified By Staff

Welfare and Institutions Code Sections 1800, 1801 and 1801.5
Statutes of 1984, Chapter 546
Statutes of 1998, Chapter 267

Extended Commitment – Youth Authority

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ITEM 7

STAFF ANALYSIS CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Welfare and Institutions Code Sections 1800, 1801 and 1801.5

Statutes of 1984, Chapter 546

Statutes of 1998, Chapter 267

Extended Commitment – Youth Authority

EXECUTIVE SUMMARY

The test claim legislation requires the district attorney to represent the Youthful Offender Parole Board (YOPB) in civil commitment procedures for the continued involuntary treatment of persons that the YOPB has determined would pose a physical danger to the public if released from the Youth Authority.

On January 25, 2001, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that Welfare and Institutions Code section 1800 imposes a reimbursable state-mandated program upon counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities performed by the prosecuting attorney:

- Reviewing the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
- Preparing and filing petitions with the superior court for the extended commitment of dangerous CYA wards;
- Representing the state in preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards; and
- Retaining necessary experts, investigators, and professionals to prepare for preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards.

The Commission further concluded that costs incurred by counties for indigent representation by public defenders, custody, and transportation are ineligible for reimbursement under article XIII B, section 6 of the California Constitution and Government Code section 17514 because these costs resulted from statutes enacted prior to January 1, 1975.

Staff Analysis

The claimant submitted its proposed parameters and guidelines on February 26, 2001. Staff received comments on the claimant's proposal from the State Controller's Office (SCO), dated March 14, 2001, and the Department of Finance (DOF), dated March 29, 2001. The claimant responded to the state agency comments on April 19, 2001.

No comments were received on, nor did staff make any substantive changes to, sections: I. Summary of the Mandate; II. Eligible Claimants; VI. Supporting Data; VII. Offsetting Savings and Other Reimbursements; or VIII. Required Certification. Non-substantive changes were made for the purposes of clarification, conformity to the Statement of Decision, and consistency with language in recently adopted parameters and guidelines.

In section III. Period of Reimbursement, staff clarified that the 1998 test claim statute did not impose any new reimbursable activities. The period of reimbursement, beginning July 1, 1997, was not changed.

Staff made several substantive modifications to the claimant's proposed parameters and guidelines in section IV. Reimbursable Activities. First, staff added sub-headings to distinguish between "One-time Activities" for the initial development of the policies, and "Continuing Activities" to update the policies to reflect the court's interpretation of the test claim legislation. Additionally, it was revised to allow one-time training for each person employed by the district attorney's office that works on the mandated program. Finally, language was revised to clarify that the mandated activities pertained only to those duties performed by county district attorney offices.

In the Extended Commitment Proceedings section, the claimant included eight items for cost reimbursement and staff made several substantive changes. First, language was added to this section to provide reimbursement in the event that the YOPB files a new application under Welfare and Institutions Code section 1800 and requests the district attorney to initiate recommitment proceedings for the continued detention of a CYA ward. Second, it was modified to include reimbursement for the district attorney representing the state in probable cause hearings, civil trials, and hearings on motions in the superior court pertaining to the extended commitment proceedings of a CYA ward. Third, "transportation, housing, and security of the ward for all hearings under Welfare and Institutions Code, section 1800, *et seq.*" was deleted since the Commission's Statement of Decision specifically determined that these costs were not reimbursable.

In section V. Claim Preparation and Submission, staff revised B. Indirect Costs to reflect what the claimants, representatives of the SCO, and staff have agreed to use as the definition of indirect costs as found in the Office of Management and Budget (OMB) Circular A-87.

Staff added section IX. Parameters and Guidelines Amendments to cite the Commission's regulations regarding amendments to parameters and guidelines.

Staff Recommendation

Staff recommends that the Commission adopt the claimant's proposed parameters and guidelines, as modified by Commission staff, beginning on page 11.

Claimant

County of Alameda

Chronology

01/25/01 Commission on State Mandates (Commission) adopted Statement of Decision¹
02/26/01 Claimant submitted Proposed Parameters and Guidelines²
03/16/01 The State Controller's Office (SCO) submitted comments³
03/29/01 The Department of Finance (DOF) submitted comments⁴
04/19/01 Claimant submitted rebuttal comments⁵
05/11/01 Commission issued staff analysis

Summary of the Mandate

Prior to the 1984 test claim legislation, state law did not specify who should represent the Youth Authority Board and Youthful Offender Parole Board (YOPB) in extended commitment proceedings. The legislative history indicates that the Attorney General declined to represent the YOPB, maintaining that it was a local responsibility. As a result, the prosecuting district attorney petitioned the committing court on behalf of the California Youth Authority (CYA).

In 1984, however, the test claim legislation amended Welfare and Institutions Code section 1800 to provide that, whenever the YOPB determines the discharge of a CYA ward would be physically dangerous to the public due to the individual's mental or physical deficiency, disorder, or abnormality, the YOPB shall request the prosecuting district attorney to petition the committing court for an order directing the ward to remain in the custody of the YOPB.⁶

The YOPB's request to the prosecuting district attorney initiates the extended commitment process. In the first stage, the prosecuting district attorney petitions the court to extend the commitment of dangerous CYA wards by submitting a written statement of facts, which supports the YOPB's opinion that the CYA ward poses a danger to the public. If the petition supports a finding of probable cause, then the court is required to order a preliminary hearing. At the second stage, preliminary hearing, the court must find probable cause that, if released, the CYA ward poses a danger to the public. If the court makes this finding, it is required to order the extended commitment of the ward. If the court makes such an order, by right, the case will then proceed to stage three, a jury trial. At the trial, the jury affirms or denies the court's extended commitment order by answering the following question: "Is the person physically dangerous to the public because of his or her mental or physical deficiency,

¹ Exhibit A

² Exhibit B

³ Exhibit C

⁴ Exhibit D

⁵ Exhibit E

⁶ The determination of physically dangerous and mental or physical deficiency, disorder or abnormality is subject to a reasonable interpretation. (*People v. Cavanaugh* (1965) 234 Cal.App.2d 316, 323.)

disorder, or abnormality?"⁷ To affirm the court's order, the jury must unanimously decide beyond a reasonable doubt that the CYA ward poses a danger to the public if released.

On January 25, 2001, the Commission adopted its Statement of Decision finding that Welfare and Institutions Code section 1800 imposes a reimbursable state-mandated program upon counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities performed by the prosecuting attorney:

- Reviewing the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
- Preparing and filing petitions with the superior court for the extended commitment of dangerous CYA wards;
- Representing the state in preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards; and
- Retaining necessary experts, investigators, and professionals to prepare for preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards.

The Commission further concluded that costs incurred by counties for indigent representation by public defenders, custody, and transportation are ineligible for reimbursement under article XIII B, section 6 of the California Constitution and Government Code section 17514 because these costs resulted from statutes enacted prior to January 1, 1975.

Staff Analysis

Staff reviewed the claimant's proposal and the comments received. No comments were received on, nor did staff make any substantive changes to, sections: I. Summary of the Mandate; II. Eligible Claimants; VI. Supporting Data; VII. Offsetting Savings and Other Reimbursements; or VIII. Required Certification. Non-substantive changes were made for the purposes of clarification, conformity to the Statement of Decision, and consistency with language in recently adopted parameters and guidelines.

Staff modified the claimant's proposed parameters and guidelines, as discussed below:

III. Period of Reimbursement

Staff clarified that the 1998 test claim statute did not impose any new reimbursable activities. The period of reimbursement, beginning July 1, 1997, was not changed.

IV. Reimbursable Activities

The claimant's proposal describes reimbursable activities separately for administrative activities and extended commitment proceedings. Staff made several substantive modifications to the claimant's proposal by dividing the section into two subsections: 1) A. One-time

⁷ Government Code section 1801.5.

Activities, and 2) B. Continuing Activities. Subsection B. Continuing Activities was further divided into "Administrative" and "Extended Commitment Proceedings."

A. One-time Activities

The claimant requests reimbursement for "developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities." The DOF and SCO assert that this activity is a one-time activity. The claimant argues, however, that policies and procedures should be able to be updated to reflect changes in the law, either by statute or interpretive case law. Staff notes that any changes in statute would be the subject of another test claim. However, staff agrees with the claimant that changes in law due to a court's interpretation of the test claim legislation are reasonably necessary to carry out the mandate.⁸ Therefore, staff added sub-headings to distinguish between "One-time Activities" for the initial development of the policies, and "Continuing Activities" to update the policies to reflect the court's interpretation of the test claim legislation.

Additionally, the claimant's proposed item B7, renumbered to item A2, requests reimbursement for providing "professional staff" with "training, publication, and information regarding extended commitment proceedings and criteria for determining whether ward poses a danger to the public due to the individual's mental or physical deficiency, disorder, or abnormality." Staff revised this item to allow one-time training for each person employed by the district attorney's office that works on the mandated program. Staff notes that the test claim legislation does not specifically require reimbursement for training; however, staff finds that this activity is reasonably necessary to carry out the mandate.

B. On-going Activities

Administrative Activities

The claimant requests reimbursement for "developing and maintaining files manually and/or electronically pertaining to the conduct of the mandated activities, including the procurement of a system to track individuals committed...together with usual administrative activities to administer the mandated activities." The SCO and DOF requested that this activity be revised to clarify what is reimbursable. The claimant proposed specifying that the mandated activities pertain only to those duties encompassed by county district attorney offices pursuant to the mandate. Staff modified the language to clarify that reimbursement was limited to those duties performed by the district attorney in representing the YOPB. Staff also finds that these activities are reasonably necessary to carry out the mandate.

In addition, "a system to track individuals committed" was included in the claimant's proposal. However, the district attorney has no reason to track CYA wards at the Youth Authority during their period of extended commitment. Welfare and Institutions Code section 1802 provides that it is the YOPB's responsibility to track CYA wards and request representation from the district attorney if subsequent commitment proceedings are necessary. Specifically, Welfare and Institutions Code section 1802 states:

⁸ Section 1183.1, subdivision (a)(4), of the Commission's regulations authorize the Commission to include a description of the most reasonable methods of complying with the mandate.

[T]he Youthful Offender Parole Board shall...file a new application for continued detention in accordance with the provisions of Section 1800 if continued detention is deemed necessary....[¶] Each person shall be discharged from the control of the authority at the termination of the period stated...unless the board has filed a new application and the court has made a new order for continued detention....

Therefore, staff deleted the claimant's proposed language from this section.

Extended Commitment Proceedings

In this section, the claimant includes eight items for cost reimbursement. Staff made substantive modifications as follows:

Item B3

Staff incorporated the claimant's proposed language after revising it to accurately reflect the requirements of the test claim legislation.

Item B4

Staff modified this item to provide reimbursement in the event that the YOPB files a new application under Welfare and Institutions Code section 1800 and requests the district attorney to initiate recommitment proceedings for the continued detention of a CYA ward. This also applies to items B3, B4, and B5.

Item B5

The claimant includes the activity to "represent the state in *all* civil hearings, probable cause hearings, jury trials, motions and related matters considering any commitment, subsequent recommitment and related hearings pursuant to Welfare and Institutions Code, section 1800, et seq." The SCO suggested that the word "all" be deleted to clarify reimbursable activities and to be consistent with the activities adopted in the Commission's Statement of Decision. The claimant disagrees, maintaining that:

[T]he word "all" should not be deleted. It is not improbable for defense attorneys to request continuances at hearings, or set motions for hearing on the Extended Commitment - Youth Authority. It is for the purpose of including these miscellaneous motions and hearings pertaining to these matters. Without the word 'all,' it would be difficult to prove to any auditor that attendance at a hearing pertaining to Extended Commitment - Youth Authority was necessary if it didn't fall within the narrow categories specified.

Staff agrees that the use of the word "all" may be overbroad. Staff revised the language in this item as follows: "Representing the state in probable cause hearings, civil trials, and hearings on motions in the superior court pertaining to the extended commitment, and subsequent recommitment of CYA wards determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority."

Item B6

The claimant's proposal provides reimbursement to "retain or hire necessary experts, investigators, and professionals to prepare for the hearing, jury trial and related actions

concerning matters under Welfare and Institutions Code, section 1800, *et seq.*” Staff deleted the term “related actions” from the language to maintain consistency with the Statement of Decision and the test claim legislation.

The Statement of Decision provides reimbursement for hiring and retaining expert witnesses. Thus, staff finds that costs to subpoena witnesses and pay witness fees are reasonably necessary to carry out this mandate. Accordingly, staff added a separate sentence under this item that states: “Costs to subpoena witnesses, including witness fees and expert witness fees, are reimbursable under this activity.” See discussion regarding Item B8 below.

Item B7

This item identifies “traveling to and from state hospitals or the ward’s place of confinement to obtain medical records, case files, and interview prospective witnesses” as a reimbursable activity. The SCO recommends that the phrase “if necessary” be added. The claimant disagrees with the SCO’s recommendation because it is uncertain who would determine whether or not the trip is appropriate.

Here, the district attorney is required to represent the YOPB. To do so, the district attorney may need to travel to various places to obtain evidence necessary to represent the YOPB. Thus, staff finds that this activity is reasonably necessary to carry out the mandate. Accordingly, staff revised this item to read: “If the district attorney deems it necessary, traveling to and from state hospitals or the ward’s place of confinement to obtain medical records, case files, and interview prospective witnesses pertaining to the extended commitment, and subsequent recommitment, of CYA wards determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority.”

Claimant’s Item B6 (deleted)

The claimant includes in this item costs associated with “transportation, housing, and security of the ward for all hearings under Welfare and Institutions Code, section 1800, *et seq.*” Both the SCO and DOF disagree, asserting that the Commission’s Statement of Decision determined that these costs were not reimbursable.

The Commission’s Statement of Decision specifically states:

The Commission further concludes that costs incurred by counties for indigent representation by public defenders, *custody, and transportation are ineligible for reimbursement* under section 6, article XIII B of the California Constitution and Government Code section 17514 because these costs resulted from statutes enacted prior to January 1, 1975. (Emphasis added).

Therefore, staff deleted it from this section.

Claimant’s Item B8 (deleted)

The last item includes “costs to subpoena witnesses, including witness fees and expert witness fees, as well as usual court costs for all hearings pursuant to Welfare and Institutions Code, section 1800 *et seq.*” However, the SCO and DOF propose inserting the phrase “not funded

by State Trial Court Funding” so that eligible claimants will not receive reimbursement for costs already addressed as part of trial court funding. The claimant’s rebuttal stated:

Court costs are a legal term of art, and do not pertain to, nor do they encompass any court functions. Rather, these costs include such items as deposition transcripts, costs of service of subpoenas (to appear as well as *duces tecum*), witness fees, filing fees, expert witness fees, and related matters. The utilization of “court costs” in item B8 is not meant to cover any costs for the operation of the courts, but rather those items of cost that would properly be subject to a motion to tax costs.

Staff finds that this item is repetitive because the costs are addressed under other items. The cost to subpoena witnesses, including witness fees and expert witness fees, is specifically addressed under item B6. Items B4 and B5 provide reimbursement for all costs incurred in representing the YOPB in court. Item B4 addresses filings and petitions, and item B5 addresses appearing before the court in probable cause hearings or civil trials. Therefore, staff deleted this item to avoid duplication.

V. Claim Preparation and Submission

B. Indirect Costs

In the context of another claim, the claimants, representatives of the SCO, and staff have had discussions regarding the definition of indirect costs pertaining to cities and counties. The parties agreed to revise this section by using the definition of indirect costs as found in the Office of Management and Budget (OMB) Circular A-87. For purposes of consistency, staff modified this section accordingly.

IX. Parameters and Guidelines Amendments

Staff added this section to cite the Commission’s regulations regarding amendments to parameters and guidelines.

Staff Recommendation

Staff recommends that the Commission adopt the claimant’s proposed parameters and guidelines, as modified by Commission staff, beginning on page 9.

Claimant's Proposed Parameters and Guidelines, As Modified By Staff

Welfare and Institutions Code, Sections 1800, 1801 and 1801.5
~~Chapter 546, Statutes of 1984, Chapter 546~~
~~Chapter 267, Statutes of 1998, Chapter 267~~

Extended Commitment – Youth Authority

I. SUMMARY AND SOURCE OF THE MANDATE

The test claim legislation requires the district attorney to represent the Youthful Offender Parole Board (YOPB) in civil commitment procedures for the continued involuntary treatment of persons that the YOPB has determined would pose a physical danger to the public if released from the Youth Authority.

On January 25, 2001, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that Welfare and Institutions Code section 1800 imposes a reimbursable state-mandated program upon counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities performed by the prosecuting attorney:

- Reviewing the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
- Preparing and filing petitions with the superior court for the extended commitment of dangerous CYA wards;
- Representing the state in preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards; and
- Retaining necessary experts, investigators, and professionals to prepare for preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards.

The Commission further concluded that costs incurred by counties for indigent representation by public defenders, custody, and transportation are ineligible for reimbursement under article XIII B, section 6 of the California Constitution and Government Code section 17514 because these costs resulted from statutes enacted prior to January 1, 1975.

~~In 1963, the Legislature enacted the extended commitment procedure for dangerous juvenile offenders under Welfare and Institutions Code, Section 1800 *et seq.* The former Youth Authority Board would determine that the discharge of a ward would be dangerous to the public due to the individual's mental or physical deficiency, disorder or abnormality, and~~

authorized the Board to initiate a civil process to extend the ward's commitment for an additional two years. In 1971, the Legislature added a procedure whereby persons remanded to the CYA could file a written demand for jury trial on the extended civil commitment.

Prior to the 1984 test claim legislation, state law did not specify the representative of the Youth Authority Board, and its successor, the Youth Offender Parole Board. Legislative history indicates that the Attorney General declined to represent the Youth Authority Parole Board, maintaining it was a local responsibility. As a result, the district attorney would petition the court on behalf of the California Youth Authority.

With the enactment of the test claim legislation, the district attorney is required to file and pursue petitions on behalf of the Youth Offender Parole Board. First, the Youth Offender Parole Board requests that the district attorney initiate the extended commitment process. The district attorney then petitions the court to extend the commitment, accompanied by the requisite documentation. If the petition and documentation support a finding of probable cause, the court orders a preliminary hearing. At the preliminary hearing, the court must find probable cause¹ that if released, the ward poses a danger to the public, and that the ward suffers from a mental or physical deficiency, disorder or abnormality. At this preliminary hearing, evidence may be presented and witnesses called. If the court makes a finding of probable cause, the court then orders the extended commitment of the ward. If the court finds after the hearing, that there is probable cause to extend the ward's commitment, the ward has a right to a jury trial, unless same is waived. At the jury trial, the jury must unanimously find, beyond a reasonable doubt, that the ward poses a danger to the public if released.

On January 25, 2001, the Commission adopted its Statement of Decision that the test claim legislation constitutes a reimbursable state mandated program upon local governments within the meaning of Section 6, Article XXIII B of the California Constitution and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Counties are eligible claimants. Any county or city and county.

III. PERIOD OF REIMBURSEMENT

At the time this test claim was filed, Section 17557 of the Government Code states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. This test claim was filed On May 10, 1999, by the County of Alameda on May 10, 1999, filed the within test claim. Therefore, costs incurred for Chapter 546, Statutes of 1984, chapter 546 and Chapter 267, Statutes of 1998 are eligible for reimbursement on or after July 1, 1997.²

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included in the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs

¹ Note that the 1998 amendment to Welfare and Institutions Code lowered the standard from beyond a reasonable doubt to probable cause.

² Statutes of 1998, chapter 267 did not impose any new reimbursable activities on counties.

shall be submitted within 120 days of notification by from the date on which the State Controller of the issuance of issues claiming instructions.

If total costs for a given year do not exceed \$200.00, no reimbursement shall be allowed, except as otherwise allowed by Government Code, section 17564.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, all the direct and indirect costs of labor, materials and supplies, and contracted services, fixed assets, travel, and training and travel for the performance of the following activities, are eligible for reimbursement incurred for the following mandate components are reimbursable:

A. Administrative Activities (On-going Activities) One-time Activities

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities the district attorney representing the YOPB in extended commitment proceedings of CYA wards.
2. Providing each person employed by the district attorney's office that works on the mandated program with training, publication, and information regarding extended commitment proceedings and criteria for determining whether the ward poses a danger to the public due to the individual's mental or physical deficiency, disorder, or abnormality (one-time per employee).

B. Continuing Activities

Administrative

1. Updating internal policies, procedures, manuals and other materials pertaining to the district attorney representing the YOPB in extended commitment proceedings of CYA wards to reflect changes in law due to a court's interpretation of the test claim legislation.
2. Developing and maintaining files manually and/or electronically, files pertaining to the district attorney representing the YOPB in extended commitment proceedings of CYA wards, conduct of the mandated activities, including the procurement of a system to track individuals committed pursuant to Welfare and Institutions Code, section 1800, et seq., together with usual administrative activities to administer the mandated activities.

B. Extended Commitment Proceedings

Counties are entitled to reimbursement for the following activities only after the YOPB determines that the discharge of a person from the control of the Youth Authority at the stated time would be physically dangerous to the public, and the YOPB requests representation of the district attorney in extended commitment proceedings pursuant to Welfare and Institutions Code section 1800:

13. Reviewing the state's recommendation that a given California Youth Authority ward's commitment be extended, together with the files and records provided, YOPB's written statement of facts, and files and records, upon which the YOPB bases its opinion that discharge from control of the Youth Authority at the time stated would be physically dangerous to the public.

~~24. Prepare~~Preparing and fileing petitions and supporting documentation with the superior court for the continued extended commitment, and subsequent recommitment, of CYA wards determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority.

~~35. Representing the state in all civil hearings, probable cause hearings, jury civil trials, and hearings on motions in the superior court and related matters pertaining to the extended considering any commitment, and subsequent recommitment and related hearings pursuant to Welfare and Institutions Code, section 1800, et seq. of CYA wards determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority.~~

~~6. Retaining or hire~~hiring necessary experts, investigators, and professionals to prepare for the ~~preliminary probable cause hearings, jury and civil trials and related actions concerning matters pertaining to the extended commitment, and subsequent recommitment, of CYA wards determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority. under Welfare and Institutions Code, section 1800, et seq.~~

Costs to subpoena witnesses, including witness fees and expert witness fees, are reimbursable under this activity.

~~57. If the district attorney deems it necessary, T~~traveling to and from state hospitals or the ward's place of confinement to obtain medical records, case files, and interview prospective witnesses pertaining to the extended commitment, and subsequent recommitment, of any CYA ward determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority.

~~6. Transportation, housing, and security of the ward for all hearings under Welfare and Institutions Code, section 1800, et seq.~~

~~7. Provide professional staff with training, publication and information regarding recommitment proceedings and criteria for determining whether ward poses a danger to the public due to the individual's mental or physical deficiency, disorder or abnormality.~~

~~8. Costs to subpoena witnesses, including witness fees and expert witness fees, as well as usual court costs for all hearings pursuant to Welfare and Institutions Code, section 1800 et seq.~~

V. CLAIM PREPARATION AND SUBMISSION

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document and they must be supported by the following cost element information:-

SUPPORTING DOCUMENTATION

~~Claimed costs shall be supported by the following cost element information:~~

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions and shall be supported by the following cost element information:-

Claimed costs shall be supported by the following cost element information:-

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee fringe benefits.

Reimbursement includes compensation paid for salaries, wages, and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Employee fringe benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

Identify the expenditures that are a direct cost of this mandate. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

4. Fixed Assets

List the costs of the fixed assets that have been acquired specifically for the purpose of this mandate. If the fixed mandate is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset which is used for the purposes of the mandated program is eligible for reimbursement.

4-5. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points and travel costs.

5-6. Training

The cost of training an employee to perform the mandated activities, as specified in section IV of these parameters and guidelines, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, ~~expenses and per diem~~. If the training encompasses subjects broader than this mandate, only the pro rata portion of the training costs can be claimed.

B. Indirect Costs

Compensation for indirect costs is eligible for reimbursement. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%. pursuant to the Office of Management and Budget (OMB) Circular A-87.

~~If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.~~

~~The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.~~

~~In calculating an ICRP, the Claimant shall have the choice of one of the two following methodologies:~~

- ~~1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.~~

Or

- ~~2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.~~

VI. SUPPORTING DATA

For auditing purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, ~~and all reimbursement claims are subject to audit during the period specified in Government Code, section 17558.5, subdivision (a).~~ Pursuant to Government Code section 17558.5, these documents must be kept on file by the agency submitting the claim for a period of no less than two years after the later of (1) the end of the calendar year in which the reimbursement claim is filed or last amended, or (2) if no funds are appropriated for the fiscal year for which the claim is made, the date of initial payment of the claim.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

~~IX. DATA FOR DEVELOPMENT OF THE STATEWIDE COST ESTIMATE~~

~~The State Controller is directed to include in the claiming instructions a request that Claimants send an additional copy of the test claim forms for the initial years' reimbursement claims by mail to the Commission on State Mandates, at 980 Ninth Street, Suite 300, Sacramento, CA 95814. Although providing this information to the Commission on State Mandates is not a condition of reimbursement, Claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate which will be the basis for the appropriation to be made by the Legislature for this program.~~

IX. PARAMETERS AND GUIDELINES AMENDMENTS

Pursuant to Title 2, California Code of Regulations, section 1183.2, Parameters and Guidelines amendments filed before the deadline for initial claims as specified in the Claiming Instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. A Parameters and Guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15, following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.

PAGES 17 AND 18 LEFT BLANK INTENTIONALLY

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

No. CSM 98-TC-13

Welfare and Institutions Code sections 1800,
1801 and 1801.5, as amended by Statutes of
1984, Chapter 546 and Statutes of 1998,
Chapter 267;

Filed on May 10, 1999

By the County of Alameda, Claimant.

~~Extended Commitment—Youth Authority~~

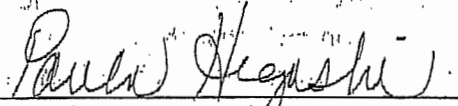
STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2, CALIFORNIA
CODE OF REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on January 25, 2001)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in
the above-entitled matter.

This Decision shall become effective on January 29, 2001.



Paula Higashi, Executive Director

ITEM 9

PROPOSED STATEMENT OF DECISION PARTIALLY APPROVED TEST CLAIM

Welfare and Institutions Code Sections 1800, 1801 and 1801.5
Statutes of 1984, Chapter 546
Statutes of 1998, Chapter 267

Extended Commitment—Youth Authority

EXECUTIVE SUMMARY

The Commission on State Mandates heard this test claim on November 30, 2000. The test claim legislation makes technical changes to procedures for the extended commitment of dangerous juvenile offenders subject to the jurisdiction of the California Youth Authority (CYA), and requires the Youthful Offender Parole Board (YOPB) to request representation from the prosecuting district attorney. These procedures generally require the following:

- Appointment of the prosecuting district attorney to represent the YOPB in extended commitment proceedings.
- The filing of the petition with the committing court to extended commitment of a dangerous juvenile offender.
- A civil preliminary hearing on the petition for the extended commitment.
- The right to a jury trial, with a unanimous jury verdict finding beyond a reasonable doubt that the juvenile offender poses a danger to the public, before the juvenile offender can be committed.

The Commission, by a vote of 7 to 0, partially approved this test claim.

The Commission concluded that Welfare and Institutions Code section 1800 imposes a reimbursable state-mandated program upon counties within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities performed by the prosecuting attorney:

- Review the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
- Prepare and file petitions with the superior court for the extended commitment of dangerous CYA wards;

- Represent the state in preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards;
- Retain necessary experts, investigators and professionals to prepare for preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards.

The Commission further concludes that costs incurred by counties for indigent representation by public defenders, custody, and transportation are ineligible for reimbursement under section 6, article XIII B of the California Constitution and Government Code section 17514 because these costs resulted from statutes enacted prior to January 1, 1975.

The sole issue before the Commission is whether the Proposed Statement of Decision accurately reflects the vote of the Commission.¹

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Statement of Decision (beginning of page 3), which accurately reflects the Commission's decision.

¹ Title 2, California Code of Regulations, section 1188.1, subdivision (g).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Welfare and Institutions Code sections 1800, 1801 and 1801.5, as amended by Statutes of 1984, Chapter 546 and Statutes of 1998, Chapter 267;

Filed on May 10, 1999

By the County of Alameda, Claimant.

No. CSM 98-TC-13

Extended Commitment—Youth Authority

PROPOSED STATEMENT OF DECISION
PURSUANT TO GOVERNMENT CODE
SECTION 17500 ET SEQ., TITLE 2,
CALIFORNIA CODE OF REGULATIONS,
DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Presented on January 25, 2001)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on November 30, 2000 during a regularly scheduled hearing. Ms. Pamela Stone and Ms. Karen Meredith, appeared for the County of Alameda. Mr. Leonard Kaye, appeared for the County of Los Angeles. Mr. James Apps, appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 7 to 0, partially approved this test claim.

BACKGROUND AND FINDINGS

The test claim legislation makes technical changes to procedures for the extended commitment of dangerous juvenile offenders subject to the jurisdiction of the California Youth Authority (CYA), and requires the Youthful Offender Parole Board (YOPB) to request representation from the prosecuting attorney. Under California law, the CYA may not retain a ward in custody beyond the age of 25.

In 1963, the Legislature established the extended commitment procedure for dangerous juvenile offenders under Welfare and Institutions Code section 1800 et seq.² The procedures authorized the former Youth Authority Board to determine that the discharge of a ward would be physically dangerous to the public due to the individual's mental or physical deficiency, disorder or abnormality, and to initiate a civil process to extend the ward's commitment for an

² All cites will be to the Welfare and Institutions Code unless otherwise noted.

additional two years.³ The due process procedures provided for the action to be filed in the committing court, for parental notification for minors, court appointment of counsel for indigent wards, examination of witnesses and evidence and a full hearing. In 1971, the Legislature amended the original statutory scheme by adding a procedure for persons ordered returned to the CYA to file a written demand that the question of whether he or she is physically dangerous to the public be tried by a jury in the superior court of the committing county. The extended commitment of dangerous CYA wards is not considered penal in nature, but civil. The CYA is under an affirmative duty to provide treatment. If the ward is not dangerous due to a physical or mental condition, or the condition is not treatable, the ward cannot be held beyond his or her release date.⁴

Prior to the 1984 test claim legislation, state law did not specify who should represent the Youth Authority Board and YOPB in extended commitment proceedings. The legislative history indicates that the Attorney General declined to represent the YOPB, maintaining that it was a local responsibility. As a result, the prosecuting district attorney petitioned the committing court on behalf of the CYA.

The test claim legislation amended section 1800 to provide that, if the YOPB determines the discharge of a CYA ward would be physically dangerous to the public due to the individual's mental or physical deficiency, disorder or abnormality, the YOPB shall request the prosecuting district attorney to petition the committing court for an order directing the ward to remain in the custody of the YOPB.⁵

The YOPB's request to the prosecuting district attorney initiates the extended commitment process.

1. Petitioning the Court

The prosecuting district attorney petitions the court to extend the commitment of dangerous CYA wards by submitting a written statement of facts. The written statement supports the YOPB's opinion that the CYA ward poses a danger to the public. If on its face the petition supports a finding of probable cause, then the court is required to order a preliminary hearing.

2. Preliminary Hearing

At the preliminary hearing, the court must find probable cause that, if released, the CYA ward poses a danger to the public. Prior to the 1998 amendment to section 1801, the standard of proof at the preliminary hearing was beyond a reasonable doubt.⁶ The test claim legislation lowered the burden to probable cause.

³ The YOPB may seek the extended commitment of dangerous CYA wards in two-year increments. See section 1802.

⁴ *People v. Gary* (1971) 5 Cal.3d 296, 302.

⁵ The determination of physically dangerous and mental or physical deficiency, disorder or abnormality is subject to a reasonable interpretation. (*People v. Cavanaugh* (1965) 234 Cal.App.2d 316, 323.)

⁶ The test claim legislation included only minor and technical changes to section 1801.

At this hearing, evidence may be presented and witnesses called. If the court makes a finding of probable cause that the CYA ward's release poses a danger to the public, the court is required to order the extended commitment of the ward. If the court makes such an order, by right, the case will then proceed to stage three, a jury trial.

3. Trial

Prior to the 1984 amendment to section 1801.5, it was uncertain whether jury unanimity and proof beyond a reasonable doubt was required to extend the commitment of a dangerous CYA ward.⁷ The 1984 amendment reflects the court's holding in *People v. Vernal D.* (1983) 142 Cal.App.3d 29, which held jury unanimity and proof beyond a reasonable doubt are constitutionally required.

If the court orders the extended commitment of a dangerous CYA ward after a preliminary hearing, the ward has a right to a jury trial unless waived. At the trial the jury affirms or denies the court's extended commitment order by answering the following question: "Is the person physically dangerous to the public because of his or her mental or physical deficiency, disorder or abnormality?"⁸ To affirm the court's order the jury must unanimously decide beyond a reasonable doubt that the CYA ward poses a danger to the public if released.

Claimant's Contentions

Claimant contends that the test claim legislation constitutes a reimbursable state mandated program by shifting the responsibility for petitioning the committing court to the prosecuting attorney, or in practice, the prosecuting district attorney.

Claimant further concurs with County of Los Angeles' position that indigent defense, transportation and custody costs incurred solely to implement this test claim legislation should be found to be reimbursable activities.

Interested Party's Contentions

The County of Los Angeles also submits that in addition to state reimbursement for the prosecuting district attorney's costs, the public defender's costs should be reimbursed by the state. The County of Los Angeles also asserts that counties should be reimbursed for transportation and custody costs of the CYA ward.

Department of Finance's Contentions

The Department of Finance (DOF) agrees with claimant, and finds that the test claim legislation imposes a reimbursable state mandated program.

COMMISSION FINDINGS

In order for a statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does

⁷ The test claim legislation included only minor and technical changes to section 1801.

⁸ Government Code section 1801.5.

not mandate or require local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create an increased or higher level of service over the former required level of service. The California Supreme Court has defined the word "program" subject to article XIII B, section 6, of the California Constitution as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

Finally, the new program or increased level of service must impose "costs mandated by the state" pursuant to Government Code section 17514.⁹

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation constitute a new program or higher level of service and impose costs mandated by the state?
- Are costs for indigent defense, custody, and transportation subject to reimbursement under article XIII B, section 6 of the California Constitution?

These issues are addressed below.

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

Article XIII B, section 6 of the California Constitution states that "whenever the Legislature or any state agency *mandates* a new program or higher level of service *on any local government*, the state shall provide a subvention of funds." (Emphasis added.)

Thus, in order for a test claim statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does not mandate or require local agencies to perform a task, then article XIII B, section 6 is not triggered. In such a case, compliance with the test claim statute is within the discretion of the local agency.

Section 1800 of the test claim legislation requires the YOPB chairman to request that the prosecuting district attorney petition the committing court to extend the commitment of dangerous CYA wards. However, the test claim legislation does not require the prosecuting district attorney to petition the committing court on the behalf of the YOPB. In fact, the test

⁹ Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

claim legislation states, "[t]he prosecuting attorney shall promptly notify the [YOPB] of a decision not to file a petition." Furthermore, the legislative history provides that the prosecuting district attorney's prompt notification would allow the YOPB time to contact the Attorney General's Office, so it could timely file the petition on YOPB's behalf.¹⁰ Thus, the prosecuting district attorney's responsibility to petition the committing court on behalf of the YOPB can be interpreted as optional. If this were the case, the test claim legislation would not be subject to reimbursement under article XIII B.

However, the legislative history also indicates that the Attorney General's Office has continually declined to file petitions to extend the commitment of dangerous CYA wards on YOPB's behalf.¹¹ The Attorney General's Office maintains that it is a local responsibility.¹² As a result, the prosecuting district attorney has always petitioned the committing court on behalf of the YOPB. Thus, the 1984 amendment to section 1800 did nothing more than codify this existing practice.^{13, 14}

Furthermore, the California Supreme Court has held that the prosecuting district attorney has the exclusive authority to prosecute individuals on behalf of the public.¹⁵ This does not mean that the prosecuting district attorney is required to prosecute all individuals committing public offenses. The decision whether or not to prosecute is left to the discretion of the prosecuting district attorney.¹⁶ However, the court in *Kottmeirer v. Municipal Court*, stated that representation by the district attorney is for the benefit of the people, and if a prosecuting district attorney does not prosecute a case involving serious issues of public concern, the prosecuting district attorney would be in gross dereliction of his duty to the people of the state.^{17, 18}

In the present case, the Commission finds that the prosecuting district attorney is faced with two choices: (1) petition the court to extend the commitment of dangerous CYA wards on

¹⁰ Assembly Criminal Law and Public Safety Committee Bill Analysis, dated April 4, 1984.

¹¹ California Youth Authority Bill Analysis, dated March 2, 1984.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Government Code section 17565 states, "If a local agency or school district, at its option, has been incurring cost which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

¹⁵ *People v. Eubanks* (1996) 14 Cal.4th 580, 588-590.

¹⁶ *Ibid.*

¹⁷ *Kottmeirer v. Municipal Court* (1990) 220 Cal.App.3d 602, 609.

¹⁸ The Commission notes that the Court's statements in *Eubanks* and *Kottmeirer* are in the context of criminal prosecutions. However, the extended commitment process requires the prosecuting district attorney to civilly prosecute dangerous CYA wards, which is similar to criminal prosecutions. Both can result in confinement of the individual. Moreover, the test claim legislation provides the CYA wards facing extended commitment are entitled to all the rights guaranteed under the federal and state constitutions in criminal proceedings. Therefore, the Commission finds that the use of case law surrounding criminal prosecutions is appropriate.

behalf of YOPB; or (2) decline to petition the court on behalf of YOPB, and allow dangerous CYA wards to be released in the community. If the prosecuting district attorney declines to represent the YOPB, the people of that county, and the people of the state, will not have the benefit of representation before the court on an issue of serious concern—whether to release a dangerous CYA ward into the community. The courts have held that this lack of representation by the district attorney is a gross dereliction of duty to the people of the state. Therefore, the Commission finds that the test claim legislation requires the prosecuting district attorney to petition the committing court for the extended commitment of dangerous CYA wards on behalf of the YOPB.

Accordingly, the Commission concludes that the test claim legislation is subject to article XIII B, section 6 of the California Constitution.

Issue 2: Does the test claim legislation constitute a new program or higher level of service and impose costs mandated by the state?

Section 1800 of the test claim statute requires the prosecuting district attorney to represent the YOPB in extended commitment proceedings for dangerous CYA wards. In this regard, the prosecuting district attorney is required to perform the following activities:

- Review the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
- Prepare and file petitions with the superior court;
- Represent the YOPB in the preliminary hearing and civil trial;
- Retain necessary experts, investigators, and professionals for the preliminary hearing and civil trial; and
- Interview potential witnesses for the preliminary hearing and civil trial.

Representing the state in an extended commitment proceeding for a dangerous CYA ward in California is a peculiarly governmental function administered by a local agency as a service to the public. Moreover, the test claim legislation imposes unique requirements upon counties that do not apply generally to all residents and entities of the state. Therefore, the Commission finds that county representation of the YOPB in extended commitment proceedings constitutes a "program" within the meaning of section 6, article XIII B of the California Constitution.¹⁹

Under prior law, the YOPB, like any state agency, was required to request representation from the Attorney General to petition the committing court to extend the commitment of a dangerous CYA ward. However, according to the legislative history, the Attorney General's Office continually declined to file petitions to extend the commitment of dangerous CYA wards and maintained that it is a local responsibility.

The test claim statute now requires the YOPB to request representation from the prosecuting district attorney. Although district attorneys may have represented the YOPB under prior law,

¹⁹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

such representation was voluntary. Government Code section 17565 states, "If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate." Accordingly, the Commission finds that voluntary representation of the YOPB under prior law does not bar reimbursement for costs incurred by prosecuting district attorneys after the operative date of the mandate.

Therefore, the Commission concludes that the section 1800 of the test claim legislation imposes a new program or higher level of service upon prosecuting district attorneys, within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state under Government Code section 17514 for the new activities described above.

Issue 3: Are costs for indigent defense, custody, and transportation subject to reimbursement under article XIII B, section 6, of the California Constitution?

The Claimant and the County of Los Angeles now assert that costs for the public defender representing indigent CYA wards at extended commitment proceedings, and the CYA ward's custody and transportation costs during the extended commitment proceedings should be reimbursed under this test claim. However, the County overlooks the fact that the test claim statutes did not create the extended commitment proceeding. Statutes of 1963, Chapter 1693 established the extended commitment proceeding.

Article XIII B, section 6 of the California Constitution reads in pertinent part:

"Whenever the Legislature... mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the cost of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for...legislative mandates enacted prior to January 1, 1975...."

Government Code section 17514, further specifies in pertinent part:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975 ... which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

Under the original enactment, if the CYA ward was unable to provide his or her own counsel, state law required the court to appoint counsel to represent him.²⁰ This requirement remains unaffected by the test claim legislation and is not subject to reimbursement under article XIII B, section 6 and Government Code section 17514 because it was enacted prior to 1975. Likewise, the Commission finds that custody and transportation costs are not reimbursable because counties would have incurred these costs prior to 1975.

²⁰ Section 1801 as added by Statutes of 1963, Chapter 1693.

Although the County cites other test claims to support its contention that public defender, custody and transportation costs should be reimbursed, these claims are distinguishable from the *Extended Commitment - Youth Authority Test Claim*. Each of the test claims cited, *Mentally Disordered Sexual Offenders, Not Guilty by Reason of Insanity, and Sexually Violent Predators*, is based on statutes which were enacted after 1975.

Therefore, the Commission finds that the Claimant and the County of Los Angeles' request for reimbursement of public defender, custody and transportation costs should be denied because these costs are ineligible for reimbursement under article XIII B, section 6 and Government Code section 17514.

Conclusion

Based on the foregoing, the Commission concludes that section 1800 of the test claim legislation imposes a reimbursable state-mandated program upon counties within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities performed by the prosecuting attorney:

- Review the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
- Prepare and file petitions with the superior court for the extended commitment of dangerous CYA wards;
- Represent the state in preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards;
- Retain necessary experts, investigators, and professionals to prepare for preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards.

The Commission further concludes that costs incurred by counties for indigent representation by public defenders, custody, and transportation are ineligible for reimbursement under section 6, article XIII B of the California Constitution and Government Code section 17514 because these costs resulted from statutes enacted prior to January 1, 1975.

DRAFT PARAMETERS AND GUIDELINES

Welfare and Institutions Code, Sections 1800, 1801 and 1801.5

Chapter 546, Statutes of 1984

Chapter 267, Statutes of 1998

Extended Commitment – Youth Authority



I. SUMMARY AND SOURCE OF THE MANDATE

In 1963, the Legislature enacted the extended commitment procedure for dangerous juvenile offenders under Welfare and Institutions Code, Section 1800 *et seq.* The former Youth Authority Board would determine that the discharge of a ward would be dangerous to the public due to the individual's mental or physical deficiency, disorder or abnormality, and authorized the Board to initiate a civil process to extend the ward's commitment for an additional two years. In 1971, the Legislature added a procedure whereby persons remanded to the CYA could file a written demand for jury trial on the extended civil commitment.

Prior to the 1984 test claim legislation, state law did not specify the representative of the Youth Authority Board, and its successor, the Youth Offender Parole Board. Legislative history indicates that the Attorney General declined to represent the Youth Authority Parole Board, maintaining it was a local responsibility. As a result, the district attorney would petition the court on behalf of the California Youth Authority.

With the enactment of the test claim legislation, the district attorney is required to file and pursue petitions on behalf of the Youth Offender Parole Board. First, the Youth Offender Parole Board requests that the district attorney initiate the extended commitment process. The district attorney then petitions the court to extend the commitment, accompanied by the requisite documentation. If the petition and documentation support a finding of probable cause, the court orders a preliminary hearing. At the preliminary hearing, the court must find probable cause¹ that if released, the ward poses a danger to the public, and that the ward suffers from a mental or physical deficiency, disorder or abnormality. At this preliminary hearing, evidence may be presented and witnesses called. If the court makes a finding of probable cause, the court then orders the extended commitment of the ward. If the court finds after the hearing, that there is probable cause to extend the ward's commitment, the ward has a right to a jury trial, unless same is waived. At the jury trial, the jury must unanimously find, beyond a reasonable doubt, that the ward poses a danger to the public if released.

¹ Note that the 1998 amendment to Welfare and Institutions Code lowered the standard from beyond a reasonable doubt to probable cause.

On January 25, 2001, the Commission adopted its Statement of Decision that the test claim legislation constitutes a reimbursable state mandated program upon local governments within the meaning of Section 6, Article XXIII B of the California Constitution and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Counties are eligible claimants.

III. PERIOD OF REIMBURSEMENT

At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before June 30 following a fiscal year to establish eligibility for reimbursement for that fiscal year. On May 10, 1999, the County of Alameda filed the within test claim. Therefore, costs incurred for Chapter 546, Statutes of 1984 and Chapter 267, Statutes of 1998 are eligible for reimbursement on or after July 1, 1997.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included in the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$200.00, no reimbursement shall be allowed, except as otherwise allowed by Government Code, section 17564.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities, are eligible for reimbursement:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Developing and maintaining files manually and/or electronically pertaining to the conduct of the mandated activities, including the procurement of a system to track individuals committed pursuant to Welfare and Institutions Code, section 1800, *et seq.*, together with usual administrative activities to administer the mandated activities.

B. Extended Commitment Proceedings

1. Review the state's recommendation that a given California Youth Authority ward's commitment be extended, together with the files and records provided.
2. Prepare and file petitions and supporting documentation with the court for the continued commitment.
3. Represent the state in all civil hearings, probable cause hearings, jury trials, motions and related matters considering any commitment, subsequent recommitment and related hearings pursuant to Welfare and Institutions Code, section 1800, *et seq.*
4. Retain or hire necessary experts, investigators, and professionals to prepare for the preliminary hearing, jury trial and related actions concerning matters under Welfare and Institutions Code, section 1800, *et seq.*
5. Travel to and from state hospitals or the ward's place of confinement to obtain medical records, case files, and interview prospective witnesses.
6. Transportation, housing, and security of the ward for all hearings under Welfare and Institutions Code, section 1800, *et seq.*
7. Provide professional staff with training, publication and information regarding recommitment proceedings and criteria for determining whether ward poses a danger to the public due to the individual's mental or physical deficiency, disorder or abnormality.
8. Costs to subpoena witnesses, including witness fees and expert witness fees, as well as usual court costs for all hearings pursuant to Welfare and Institutions Code, section 1800 *et seq.*

V. **CLAIM PREPARATION AND SUBMISSION**

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

Identify the expenditures that are a direct cost of this mandate. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

4. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points and travel costs.

5. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location.

Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, expenses and per diem.

B. Indirect Costs

Compensation for indirect costs is eligible for reimbursement. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the two following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

Or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code, section 17558.5, subdivision (a).

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

IX. DATA FOR DEVELOPMENT OF THE STATEWIDE COST ESTIMATE

The State Controller is directed to include in the claiming instructions a request that Claimants send an additional copy of the test claim forms for the initial years' reimbursement claims by mail to the Commission on State Mandates, at 980 Ninth Street, Suite 300, Sacramento, CA 95814. Although providing this information to the Commission on State Mandates is not a condition of reimbursement, Claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate which will be the basis for the appropriation to be made by the Legislature for this program.

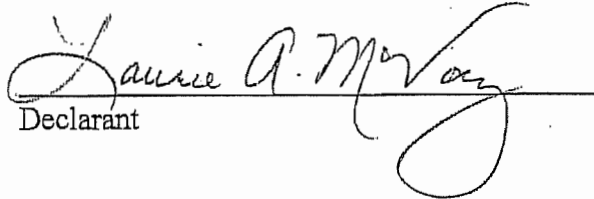
PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On February 26, 2001, I served the Draft Parameters and Guidelines, re: Extended Commitment – Youth Authority, 98-TC-13, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list, and by sealing and depositing said envelope in the United State mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 26th day of February, 2001 at Sacramento, California.


Declarant

MAILING LIST

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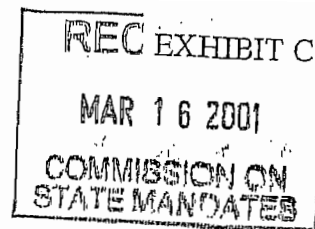
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State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816



KATHLEEN CONNELL
Controller of the State of California

March 14, 2001

Ms. Shirley Opie
Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: PROPOSED PARAMETERS AND GUIDELINES
EXTENDED COMMITMENT - YOUTH AUTHORITY
CSM 98-TC-13, STATUTES OF 1984, CHAPTER 546

Dear Ms. Opie:

We have reviewed the proposed Parameters and Guidelines (P's & G's) submitted by the County of Alameda for the above referenced subject matter. We strongly recommend the Commission on State Mandates (COSM) review the P's & G's to ensure that all reimbursable components are in accordance with the adopted Statement of Decision. However, here some suggested amendments; additions are underlined, deletions have strike-throughs.

IV. REIMBURSABLE ACTIVITIES

1. Under A: Administrative Activities (~~On-going~~ One Time Activities)

The administrative activities of developing or updating internal policies, procedures, manuals, and other materials pertaining to this mandate were not identified by the COSM as a specific reimbursable activity. It seems reasonable that these costs be identified as one time reimbursable costs instead of on-going costs.

Administrative Activities (On-going Activities)

"Developing and maintaining files manually and/or electronically pertaining to the conduct of the mandated activities, including the procurement of a system to track individuals committed pursuant to Welfare and Institutions Code, section 1800, et

seq., together with usual administrative activities to administer the mandated activities.

The administrative activity identified, "conduct of the mandated activities" is unclear and should be revised to clearly state what administrative activities are deemed necessary to carry out this mandate. In addition, COSM Statement of Decision identified costs for indigent defense, custody, and transportation as non-reimbursable since they were legislatively mandated prior to January 1, 1975. Therefore, since not all activities for extended commitment proceedings were determined to be reimbursable costs for this mandate, any costs incurred for a system to track individuals committed should be reimbursable on a prospective basis.

B. Extended Commitment Proceedings

1. "Review the state's Youth Offender Parole Board (YOPB) recommendation that a given California Youth Authority ward's commitment be extended, together with the files and records provided.
2. Prepare and file petitions and supporting documentation with the court for the continued commitment for California Youth Authority (CYA) wards considered dangerous to the public.
3. Represent the state in all civil hearings, probable cause hearings, jury trials, motions and related matters considering ~~any commitment~~, the extended commitment of dangerous CYA wards, ~~subsequent recommitment~~ and related hearings pursuant to Welfare and Institutions Code, section 1800, *et seq.*
4. Retain or hire necessary experts, investigators, and professionals to prepare for the preliminary hearing, jury trial, and related actions concerning matters for the extended commitment of dangerous CYA wards under Welfare and Institutions Code, section 1800, et seq.
5. If necessary, travel to and from state hospitals or the ward's place of confinement to obtain medical records case files, and interview prospective witnesses.
6. ~~Transportation, housing, and security of the ward for all hearings under Welfare and Institutions Code, section 1800, et seq.~~
7. Provide professional staff with training, publication, and information regarding recommitment proceedings and criteria for determining whether ward poses a danger to the public due to the individual's mental or physical deficiency disorder, or abnormality.

Ms. Shirley Opie

-3-

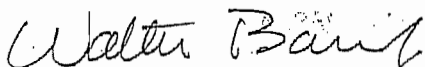
March 14, 2001

8. Costs to subpoena witnesses, including witness fees and expert witness fees, as well as usual court costs not funded by State Trial Court Funding for all hearings for the extended commitment of dangerous CYA wards pursuant to Welfare and Institutions Code, section 1800 et seq."

The suggested changes are necessary to clarify reimbursable activities and to be consistent with the reimbursable activities adopted within the COSM adopted Statement of Decision on January 29, 2001.

If you have any questions, please contact Ginny Brummels at (916) 324-0256.

Sincerely,



WALTER BARNES

Chief Deputy State Controller, Finance

WB:WGA:glb

cc: Interested parties

PROOF OF SERVICE BY MAIL

CSM -- 98-TC-13

I, the undersigned, declare as follows:

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of 18 years and not a party to the within action. My place of employment and business address is 3301 C Street, Suite 500, Sacramento, California 95816.

On March 15, 2001, I served the attached recommendation of the State Controller's Office by placing a true copy thereof enclosed in a sealed envelope addressed to each of the persons named below at the addresses shown and by depositing said envelopes in the United States mail at Sacramento, California, with postage thereon fully prepaid.

Mr. Paige Vorhies
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. James Lombard, Principal Analyst
Department of Finance
915 L Street
Room 8020
Sacramento, CA 95814

Mr. Jim Spano
State Controller's Office
Division of Audits (B-8)
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Mr. Jeff Bell
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

Mr. Allan Burdick
DMG-MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Ms. Laurie Mc Vay
DMG-MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Ms. Pam Stone, Legal Counsel
DMG-MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mr. Andy Nichols
Vavrinek Trine Day & Co., LLP
12150 Tributary Point Drive, Suite 150
Gold River, CA 95670

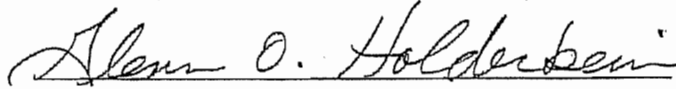
Ms. Susan Wallace, Executive Officer
Youthful Offender Parole Board
1029 J Street, Suite 500
Sacramento, CA 95814

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Lawrence G. Brown, Exec. Director
California District Attorneys Association
731 K Street, 3rd Floor
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 15, 2001, at Sacramento, California.

A handwritten signature in cursive script, reading "Glenn O. Holderbein", written over a horizontal line.

Glenn O. Holderbein

EXHIBIT D

DEPARTMENT OF
FINANCE

GRAY DAVIS, GOVERNOR

915 L STREET ■ SACRAMENTO, CA ■ 95814-2705 ■ WWW.DOF.CA.GOV

March 29, 2001

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814



Dear Ms. Higashi:

As requested in your letter of January 29, 2001 the Department of Finance has reviewed the Parameters and Guidelines submitted by Alameda County (claimant) for Claim No. CSM-98-TC-13 "Extended Commitment". Based upon the information provided with the Commission's letter of January 29, 2001, we have the following concerns regarding specific items within the Parameters and Guidelines.

Reimbursable activities listed under Administrative Activities, on page two of the Parameters and Guidelines, indicate that the development or update of internal policies of office procedure, and manuals is an ongoing activity. We believe these activities are of a nonrecurring nature; should be specified as one-time reimbursable activities rather than ongoing, and reimbursed as such.

In the Administrative Activities section, reference is made to procuring a system to track individuals and to carry out the mandated activities. There is considerable ambiguity with regard to what comprises a "system" and the mandated activities. It may be appropriate to charge an additional prorated cost of an existing system for the increased workload associated with meeting this mandate. However, as currently stated, without sufficient detail to determine the scope of the required system and its cost, and the administrative elements necessary to carry out this mandate, we believe that the State Controller may have difficulty issuing claiming instructions to reimburse these costs.

Additionally, costs associated with transportation, housing, and security of the ward for all hearings under Welfare and Institutions Code, Section 1800 *et seq.*, should not be included as a reimbursable item in the extended commitment process. In the Commission's Statement of Decision, these costs were determined to be ineligible for reimbursement as they resulted from statutes enacted prior to January 1, 1975. Therefore, item six on page three should be deleted.

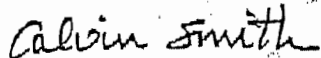
With regard to item eight in the Administrative Activities section, we would recommend that the language be revised to specify only those court costs not funded by State Trial Court Funding for hearings for extended commitment of Youth Authority wards. Absent this revision, counties may be inappropriately reimbursed for costs (such as court security costs) already addressed as part of trial court funding.

- 2 -

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your January 29, 2001 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact, Jim Lombard, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



S. Calvin Smith
Program Budget Manager

Attachments

PROOF OF SERVICE

Test Claim Name: "Extended Commitment"

Test Claim Number: CSM-98-TC-13

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On March 29, 2001, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention: Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

SB 90 Service

C/O David M. Griffiths & Associates
Attention: Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

County of San Bernardino
Office of Auditor / Controller/Recorder
Attention: Marla Faulkner
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415-0018

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Alameda County District Attorney's Office
Attention: Joline Owyang
1225 Fallon Street, 9th Floor
Oakland, CA 94612

Mr. Lawrence G. Brown, Executive Director
California District Attorneys Association
731 K Street, 3rd Floor
Sacramento, CA 95814

Mr. Michael E. Cantrell, Executive Director
California Public Defenders Association
3273 Ramos Circle, Suite 100
Sacramento, CA 95827

Ms. Susan C. Wallace
Executive Officer
Youthful Offender Parole Board
1029 J Street, Suite 500
Sacramento, CA 95814

Ms. Marcia C. Faulkner
Manager, Reimbursable Projects
County of San Bernadino
Office of the Auditor/Controller
222 W. Hospitality Lane, 4th floor
San Bernadino, CA 92415-0018

Mr. James Lombard
Department of Finance
915 L Street
Sacramento, CA 95814

Ms. Laurie McVay
DMG-MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

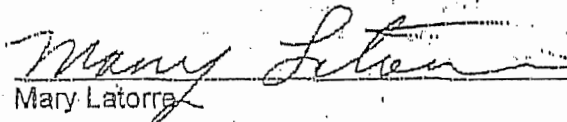
Mr. Andy Nichols
Vavrinek Trine Day & Co., LLP
12150 Tributary Point Drive, Suite 150
Gold River, CA 95670

B-08
Mr. Jim Spano
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518

Ms. Pam Stone
Legal Counsel
DMG-MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mr. Paige Vorhies
Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 29, 2001 at Sacramento, California.


Mary Latorre

RESPONSE OF THE COUNTY OF ALAMEDA
DISTRICT ATTORNEY'S OFFICE
TO COMMENTS OF THE DEPARTMENT OF FINANCE
AND STATE CONTROLLER'S OFFICE
TO DRAFT PARAMETERS AND GUIDELINES

RECEIVED

APR 19 2001

COMMISSION ON
STATE MANDATES*Extended Commitment - Youth Authority*

CMS-98-TC-13

This response is to the comments of the Department of Finance, dated March 29, 2001 and the State Controller, dated March 14, 2001.

Administrative Activities

Both the State Controller and Department of Finance indicate that the development and update of internal policies and procedures should be a one-time cost, rather than ongoing. We concur that the development of policies and procedures should be a one-time cost. However, periodically it is necessary to update those policies and procedures due to a change in the law, either by statute or interpretive case law. When such occurs, policies and procedures should be able to be updated to reflect those changes without the necessity of amending Parameters and Guidelines.

The State Controller believes that developing and maintaining files manually and/or electronically is unclear, as does the Department of Finance. First of all, given the Statement of Decision, it is obvious that this particular claim pertains only to activities conducted by a District Attorney's Office. Additionally, given the fact that this mandate claim pertains only to Extended Commitment - Youth Authority, only those administrative activities engaged in by the District Attorney's Office would be reimbursable. Whereas some counties may choose to update their own internal systems, others may have to create a system (either manually or electronically) to track the cases, as well as the time lines specified in statute. The County of Alameda has no opposition to clarifying that the mandated activities pertain only to those duties encompassed by Extended Commitment - Youth Authority to county District Attorney offices.

Transportation, Housing and Security of Ward

The County of Alameda concurs that item B6 of Reimbursable Activities should be deleted.

Controller's and Finance's Additional Comments

With regard to other proposed changes by the State Controller, we concur with the proposed changes to sections B1 and B2.

With regard to the proposed changes to B3, we respectfully disagree. It is possible for a ward that has been committed to CYA because of his or her dangerousness to be recommitted after the expiration of the time period for the initial commitment. Additionally, the word "all" should not be deleted. It is not improbable for defense attorneys to request continuances at hearings, or set motions for hearing on the Extended Commitment – Youth Authority. It is for the purpose of including these miscellaneous motions and hearings pertaining to these matters. Without the word "all", it would be difficult to prove to any auditor that attendance at a hearing pertaining to Extended Commitment – Youth Authority was necessary if it didn't fall within the narrow categories specified.

With regard to item B4, we concur.

With regard to the proposed changes to item B5, we disagree with the terminology "if necessary". Who will decide if a trip to a state hospital or to the ward's place of confinement was necessary? Local District Attorney's offices do not have unlimited funds for travel. Budget decisions are not made on the basis of whether or not a particular function is reimbursable, but rather whether the situations in a particular case require the expenditures of funds. The County of Alameda does not wish for the term "necessary" to be used, as it does not wish an auditor, without knowledge of the complexities of trying one of these matters in court, determining whether the trip was appropriate or not.

With regard to item B8, the proposed changes by the State Controller's Office as well as the Department of Finance indicates a lack of knowledge regarding "court costs", which is a legal term of art. Court costs are those items which are allowable by the court as appropriate costs.¹ These are costs incurred in the presentation of a civil case, and if inappropriate, if costs were sought², would be subject to a motion to tax costs as being unrecoverable under the law.

Court costs are a legal term of art, and do not pertain to, nor do they encompass any court functions. Rather, these costs include such items as deposition transcripts, costs of service of subpoenas (to appear as well as *duces tecum*), witness fees, filing fees³, expert witness fees, and related matters. The utilization of "court costs" in item B8 is not meant to cover any costs for the operation of the courts, but rather those items of cost that would properly be subject to a motion to tax costs.

There is no desire whatsoever to encompass court security or other related costs of operating a court. In this particular manner, the term "court costs" is that which relate solely to the prosecution (or defense) of a civil matter, which these cases are.

¹ See, for example, Code of Civil Procedure, Section 685.010 *ff.* and Section 1021 *ff.*, Section 3032 *ff.*

² No costs would probably be sought from the opposing party (the ward) in this type of matter, as most wards would not have the financial capacity to pay for same, and a judge would probably not award such costs to the District Attorney's office.

³ Note that filing fees for District Attorneys are presently waived by statute.

For the assistance of the Commission, as well as other interested parties, a true and correct copy of the Judicial Council Form Memorandum of Costs (Summary) and Memorandum of Costs (Worksheet) is attached hereto and incorporated herein by reference.

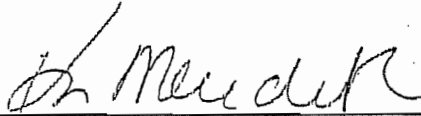
If any of the "court costs" would be reimbursed by the state to the courts, it would be above and beyond any such actual expenditures by the District Attorney's Office.

CERTIFICATION

I, Karen Meredith, state:

That I am an Assistant District Attorney with the Alameda County District Attorney's Office. I am responsible for handling many of the Extended Commitment—Youth Authority matters which are heard in Alameda County. As such, I have personal knowledge of the facts stated herein, and based upon my information and belief, I believe them to be true.

This declaration is executed this 18 day of April, 2001 at Oakland, California.

A handwritten signature in cursive script, appearing to read "K. Meredith", written over a horizontal line.

Karen Meredith
Assistant District Attorney

FOR COURT USE ONLY

TELEPHONE NO.:

FAX NO.:

ATTORNEY FOR (Name):

INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY:

PLAINTIFF:

DEFENDANT:

MEMORANDUM OF COSTS (SUMMARY)

CASE NUMBER:

The following costs are requested:

TOTALS

1. Filing and motion fees	1. \$	
2. Jury fees	2. \$	
3. Jury food and lodging	3. \$	
4. Deposition costs	4. \$	
5. Service of process	5. \$	
6. Attachment expenses	6. \$	
7. Surety bond premiums	7. \$	
8. Witness fees	8. \$	
9. Court-ordered transcripts	9. \$	
10. Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required)	10. \$	
11. Models, blowups, and photocopies of exhibits	11. \$	
12. Court reporter fees as established by statute	12. \$	
13. Other	13. \$	

TOTAL COSTS \$

I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

(Proof of service on reverse)

SHORT TITLE:	CASE NUMBER:
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PROOF OF ☐ MAILING ☐ PERSONAL DELIVERY

1. At the time of mailing or personal delivery, I was at least 18 years of age and **not a party** to this legal action.
2. My residence or business address is *(specify)*:

3. I mailed or personally delivered a copy of the *Memorandum of Costs (Summary)* as follows *(complete either a or b)*:

a. ☐ **Mall.** I am a resident of or employed in the county where the mailing occurred.

(1) I enclosed a copy in an envelope AND

(a) ☐ **deposited** the sealed envelope with the United States Postal Service with the postage fully prepaid.

(b) ☐ **placed** the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

(2) The envelope was addressed and mailed as follows:

(a) Name of person served:

(b) Address on envelope:

(c) Date of mailing:

(d) Place of mailing *(city and state)*:

b. ☐ **Personal delivery.** I personally delivered a copy as follows:

(1) Name of person served:

(2) Address where delivered:

(3) Date delivered:

(4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

.....
(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

SHORT TITLE:

CASE NUMBER:

MEMORANDUM OF COSTS (WORKSHEET)

1. Filing and motion fees

Paper filedFiling fee

a. _____ \$ _____

b. _____ \$ _____

c. _____ \$ _____

d. _____ \$ _____

e. _____ \$ _____

f. _____ \$ _____

g. ☐ Information about additional filing and motion fees is contained in Attachment 1g.

TOTAL 1.

\$

2. Jury fees

DateFee & mileage

a. _____ \$ _____

b. _____ \$ _____

c. _____ \$ _____

d. _____ \$ _____

e. ☐ Information about additional jury fees is contained in Attachment 2e.

TOTAL 2.

\$

3. Juror food: \$ _____ and lodging: \$ _____

TOTAL 3.

\$

4. Deposition costs

Name of
deponentTakingTranscribingTravelVideo-
tapingSubtotals

a. _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____

b. _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____

c. _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____

d. _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____

e. ☐ Information about additional deposition costs is contained in Attachment 4e.

TOTAL 4.

\$

(Continued on reverse)

Page _____ of _____

SHORT TITLE:	CASE NUMBER:
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5. Service of process

	<u>Name of person served</u>	<u>Public officer</u>	<u>Registered process</u>	<u>Publication</u>	<u>Other (specify)</u>
a.	_____	\$ _____	\$ _____	\$ _____	\$ _____
b.	_____	\$ _____	\$ _____	\$ _____	\$ _____
c.	_____	\$ _____	\$ _____	\$ _____	\$ _____

d. ☐ Information about additional costs for service of process is contained in Attachment 5d.

TOTAL 5. \$

6. Attachment expenses (specify):

6. \$

7. Surety bond premiums (itemize bonds and amounts):

7. \$

8. a. Ordinary witness fees

	<u>Name of witness</u>	<u>Daily fee</u>	<u>Mileage</u>	<u>Total</u>
(1)	_____	_____ days at _____ \$/day	_____ miles at _____ ¢/mile	\$ _____
(2)	_____	_____ days at _____ \$/day	_____ miles at _____ ¢/mile	\$ _____
(3)	_____	_____ days at _____ \$/day	_____ miles at _____ ¢/mile	\$ _____
(4)	_____	_____ days at _____ \$/day	_____ miles at _____ ¢/mile	\$ _____
(5)	_____	_____ days at _____ \$/day	_____ miles at _____ ¢/mile	\$ _____

(6) ☐ Information about additional ordinary witness fees is contained in Attachment 8a(6).

SUBTOTAL 8a. \$

(Continued on next page)

Page _____ of _____

SHORT TITLE:	CASE NUMBER:
MEMORANDUM OF COSTS (WORKSHEET) (Continued)	

8. b. Expert fees (per Code of Civil Procedure section 99B)

<u>Name of witness</u>	<u>Fee</u>					
(1) _____	_____	hours at \$ _____	/hr	...	\$ _____	
(2) _____	_____	hours at \$ _____	/hr	...	\$ _____	
(3) _____	_____	hours at \$ _____	/hr	...	\$ _____	
(4) _____	_____	hours at \$ _____	/hr	...	\$ _____	

(5) ☐ Information about additional expert witness fees is contained in Attachment 8b(5).

SUBTOTAL 8b. \$

c. Court-ordered expert fees

<u>Name of witness</u>	<u>Fee</u>					
(1) _____	_____	hours at \$ _____	/hr	...	\$ _____	
(2) _____	_____	hours at \$ _____	/hr	...	\$ _____	

(3) ☐ Information about additional court-ordered expert witness fees is contained in Attachment 8c(3).

SUBTOTAL 8c. \$

TOTAL (8a, 8b, & 8c) 8. \$

9. Court-ordered transcripts (specify): 9. \$

10. Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required): 10. \$

11. Models, blowups, and photocopies of exhibits (specify): 11. \$

12. Court reporter fees (as established by statute)

a. (Name of reporter): _____ Fees: \$ _____

b. (Name of reporter): _____ Fees: \$ _____

c. ☐ Information about additional court reporter fees is contained in Attachment 12c.

TOTAL 12. \$

13. Other (specify): 13. \$

TOTAL COSTS \$

(Additional Information may be supplied on the reverse)

Page _____ of _____

SHORT TITLE:

CASE NUMBER:

MEMORANDUM OF COSTS (WORKSHEET) (Continued)

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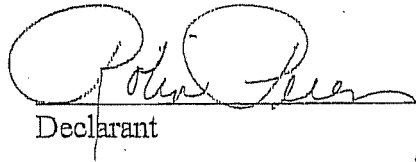
PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On April 19, 2001, I served the Response of the County of Alameda District Attorney's Office to Comments of Finance and State Controller's Office to Draft Parameters and Guidelines, re: Extended Commitment - Youth Authority, 98-TC-13, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list, and by sealing and depositing said envelope in the United State mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 19th day of April, 2001 at Sacramento, California.


Declarant

MAILING LIST

Mr. James Lombard
Department of Finance
915 L Street, Room 8020
Sacramento, CA 95814

Ms. Marcia C. Faulkner, Manager
Reimbursable Projects
County of San Bernardino
Office of the Auditor/Controller
222 W. Hospitality Lane, 4th Floor
San Bernardino, CA 92415-0018

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Ms. Susan C. Wallace,
Executive Director
Youthful Offender Parole Board
1029 J. Street, Suite 500
Sacramento, CA 95814

Mr. Lawrence G. Brown, Executive Director
California District Attorneys Association
731 K Street, 3rd Floor
Sacramento, CA 95814

Mr. Henry Hall, President
California Public Defenders Association
3273 Ramos Circle, Suite 1000
Sacramento, CA 95827

Mr. Paige Vorhies (B-8), Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

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PUBLIC HEARING
COMMISSION ON STATE MANDATES

ORIGINAL

--o0o--



TIME: 9:30 a.m.

DATE: May 24, 2001

PLACE: State Capitol, Room 126
Sacramento, California

--o0o--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--o0o--

Reported By: YVONNE K. FENNER, CSR License #10909, RPR

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A P P E A R A N C E S

COMMISSION MEMBERS

ANNETTE PORINI, Chairperson
Representative of B. Timothy Gage, Director
State Department of Finance

ALBERT P. "AL" BELTRAMI
Public Member

JOHN HARRIGAN
Representative of Kathleen Connell
State Controller

WILLIAM SHERWOOD
Representative of Philip Angelides
State Treasurer

JOANN E. STEINMEIER
School Board Member
Arcadia Unified School District

SHERRY WILLIAMS
Representative for Steven Nissen, Director
Office of Planning and Research

COMMISSION STAFF

PAULA HIGASHI, Executive Director

CAMILLE SHELTON, Staff Counsel

SEAN P. AVALOS, Staff Counsel

ELLEN FISHMAN, Staff Counsel

CATHY CRUZ, Staff Analyst

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AGENDA INDEX

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1 That takes us to our first item of business,
2 approval of the minutes from April 26th. Any comments,
3 corrections, questions?

4 Motion?

5 MS. STEINMEIER: Move approval.

6 MR. SHERWOOD: Second.

7 CHAIRPERSON PORINI: We have a motion and a
8 second. All those in favor of approving the minutes
9 indicate with "aye."

10 MULTIPLE SPEAKERS: Aye.

11 CHAIRPERSON PORINI: Opposed?

12 Minutes carry.

13 That takes us to our proposed consent calendar.
14 Paula.

15 MS. HIGASHI: The proposed consent calendar
16 today consists of item 4, adoption of proposed statement
17 of decision for the incorrect reduction claim Graduation
18 Requirements, San Jose Unified School District,
19 claimant; adoption of proposed parameters and guidelines
20 for item 6, Mentally Disordered Offenders' Extended
21 Commitment Proceedings; item 7, Extended Commitments,
22 Youth Authority; item 8, Elder Abuse, Law Enforcement
23 Training; and item 9, the adoption of one statewide cost
24 estimate for Seriously Emotionally Disturbed Pupils:
25 Out-of-State Mental Health Services in the amount of

1 \$24,164,000 for a period from January 1, '97, through
2 June 30, 2002.

3 Recommend adoption of the consent calendar.

4 CHAIRPERSON PORINI: Any questions, comments?
5 Anything anyone wants removed from consent?

6 MS. STEINMEIER: I've got a comment.

7 CHAIRPERSON PORINI: Ms. Steinmeier.

8 MS. STEINMEIER: We're kind of getting used to
9 that we have a lot of consent items, and this really
10 speaks well of our staff, so I want to give them credit
11 for that.

12 CHAIRPERSON PORINI: Yes. Both staff and our
13 claimants, that they are willing to negotiate.

14 Do I have a motion?

15 MR. BELTRAMI: So moved, Madame Chair.

16 CHAIRPERSON PORINI: All right.

17 MR. SHERWOOD: Second.

18 CHAIRPERSON PORINI: I have a motion and a
19 second. All those in favor of adopting the consent
20 calendar indicate with "aye."

21 MULTIPLE SPEAKERS: Aye.

22 CHAIRPERSON PORINI: Opposed?

23 Consent calendar carries.

24 MS. HIGASHI: Our first hearing item today --

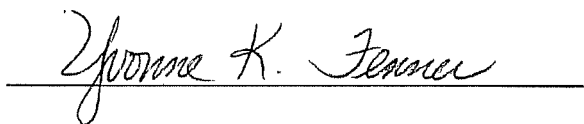
25 CHAIRPERSON PORINI: I was going to ask, are

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REPORTER'S CERTIFICATE

I hereby certify the foregoing hearing was held
at the time and place therein named; that the
proceedings were reported by me, a duly certified
shorthand reporter and a disinterested person, and was
thereafter transcribed into typewriting.

In witness whereof, I have hereunto set my hand
this 31st day of May, 2001.



Yvonne K. Fenner
Certified Shorthand Reporter
License No. 10909

MINUTES
COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
May 24, 2001

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Sherry Williams
Representative of the Director of the Office of Planning and Research
Member John Harrigan
Representative of the State Controller
Member Albert Beltrami
Public Member
Member Joann Steinmeier
School Board Member
Absent: Member John Lazar
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:32 a.m. Member Lazar was absent due to City business.

APPROVAL OF MINUTES

Item 1 April 26, 2001

Upon motion by Member Steinmeier and second by Member Sherwood, the minutes were unanimously approved.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

ADOPTION OF PROPOSED STATEMENT OF DECISION - INCORRECT
REDUCTION CLAIM

Item 4 *Graduation Requirements*, CSM 4435-I-04
San Jose Unified School District, Claimant
Education Code Section 51225.3, Statutes of 1983, Chapter 498

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 6 *Mentally Disordered Offenders' Extended Commitment Proceedings*
98-TC-09
County of Los Angeles, Claimant
Penal Code Section 2970
Statutes of 1985, Chapter 1418; Statutes of 1986, Chapter 858; Statutes of
1988, Chapters 657 and 658; Statutes of 1989, Chapter 228; Statutes of
1991, Chapter 435, Statutes of 2000, Chapter 324.
- Item 7 *Extended Commitment, Youth Authority* - 98-TC-13
County of Alameda, Claimant
Statutes of 1984, Chapter 546; Statutes of 1998, Chapter 267
- Item 8 *Elder Abuse, Law Enforcement Training* - 98-TC-12
City of Newport Beach, Claimant
Penal Code Section 13515
Statutes of 1997, Chapter 444

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

- Item 9 *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental
Health Services* - 97-TC-05 (tentative)
County of Los Angeles, Claimant
Government Code Section 7576
Statutes of 1996, Chapter 654
California Code of Regulations, Title 2, Division 9, Chapter 1,
Sections 60000-60610
California Department of Mental Health Information Notice
Number 86-29

Upon motion by Member Beltrami and second by Member Sherwood, the consent calendar, consisting of items 4, 6, 7, 8 and 9, was unanimously adopted. Member Steinmeier commended staff for their effort on the consent items.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

TEST CLAIMS

- Item 2 *Brown Act Reform* - CSM-4469
City of Newport Beach, Claimant
Statutes of 1993, Chapter 1136, 1137, and 1138
Statutes of 1994, Chapter 32

Ellen Fishman of the Commission staff presented this item. She noted that staff found that Government Code section 54952 created two new legislative bodies, which are required to

comply with all provisions of the Brown Act. Staff further found that permanent and temporary advisory bodies, except bodies composed solely of less than a quorum of the members of the legislative body, are now required to comply with the full notice and agenda requirements of the Act. Ms. Fishman explained that the test claim legislation also added new closed session requirements, as listed in staff's analysis.

Parties were represented as follows: Allan Burdick, for California State Association of Counties; Pamela Stone and Glen Everroad, for the City of Newport Beach; and Cedrik Zemitis and Jim Lombard, for the Department of Finance. Ms. Higashi swore in the witnesses.

Ms. Stone complimented staff's effort and indicated her agreement with the staff analysis. She noted the extremely technical changes to the requirements and the need for substantial training at the city level, county level and organizational levels. Ms. Stone explained that she would be asking for a training component as part of the initial reimbursement.

Mr. Zemitis argued that the test claim statutes clarify existing law regarding notice and agenda requirements and that the bills were introduced at the behest of local governments.

Mr. Zemitis further argued that local governments report savings and that the legislation was widely supported because it was intended to simplify and clarify the Brown Act with no additional costs. For these reasons, Mr. Zemitis contended that the mandate is not reimbursable.

Mr. Lombard added that it was the Department of Finance's understanding when the legislation went through that it would result in some cost savings, as reported by representatives of local entities. To the extent the Commission adopts the staff recommendation, he requested they consider providing for offsetting savings in the analysis.

Member Beltrami noted that Senator Kopp, now Judge Kopp, indicates that he introduced this bill because of requests by local agencies.

Mr. Burdick argued that the legislation offers many clarifications, but also expands upon the Brown Act. He concurred that there was general agreement by everyone that this bill was a good thing. Mr. Burdick submitted that locals did not specifically ask the Senator to introduce the legislation, but indicated that they would be willing to work in good faith to comply with it.

Member Steinmeier submitted that it was appropriate for Ms. Stone to request the training component during the parameters and guidelines phase, since it is not specifically mentioned in the bill, but naturally flows from the mandate. Member Steinmeier also noted that, in her experience on a school board, this legislation did necessitate more work on the part of the people preparing the agenda to make sure the brief description was accurate so they were not challenged. She added that the California School Boards Association might not have anticipated costs, but they had opposed parts of it. Member Steinmeier agreed that the clarification was helpful, but submitted that it went beyond clarification of the Brown Act. She supported staff's analysis.

Mr. Harrigan asked for the claimant to comment on the Department of Finance's request for language regarding cost savings. Ms. Stone replied that, in her experience with this legislation

in the county counsel's office in the County of Fresno, the legislation did not result in any cost savings.

Member Beltrami asked if it would bring about cost savings if the counsel did not have to struggle with an interpretation if it had been clarified. Ms. Stone replied that there was no longer a struggle to determine what entities come within the Brown Act, but that they had to review more agendas for more entities. She added that the costs of that determination had never been claimed, and that is where the cost savings would have been realized.

Member Beltrami agreed that there are added costs, but added that he thought the locals considered the legislation was a good thing at the time. Ms. Stone disagreed. Member Beltrami noted that the newspaper publishers indicate that the legislation was sponsored by virtually every lobbying organization representing local government. Mr. Burdick replied that everyone agreed that the final bill was a reasonable compromise in that everyone was giving something up.

Mr. Everroad noted that the City of Newport Beach did not sponsor the bill, but did find significant relief in the clarification since their attorney had erred in determining which entities were subject to the Act. Member Beltrami asked if the League sponsored the bill. Mr. Everroad said he could not respond for the League. He added that the legal costs for the determination were relieved, but those costs had never been claimed, and that the preparation and review of agendas had increased.

Ms. Stone argued that there is a substantial difference between supporting and sponsoring a bill, and that the issue under Government Code section 17556 relates to sponsoring a bill, which the locals did not.

Member Sherwood asked for staff's comment. Ms. Shelton clarified that section 17556, subdivision (a), provides that there are no costs mandated by the state when a local agency or school district requests legislative authority for the statute. She noted that there must be evidence of a resolution from the governing body to show the entity has sponsored the legislation and that such evidence does not exist for this legislation.

Mr. Burdick submitted that most people thought this was a relatively modest change that would result in minor costs. Member Beltrami noted that the issue was who asked for the legislation. He guessed it was a joint effort. Mr. Burdick replied that he thought this was one of Senator Kopp's areas of interest and that he actually was the sponsor of the bill.

Member Steinmeier said that it was a matter of timing, and that by the time the organizations, particularly the California School Boards Association, were in support, this was near the end of the process. She added that they were initially opposed unless the bill was amended and that they eventually supported the bill when it was amended. Chairperson Porini noted that, in the legislative process, they had the option of opposing the bill the entire way though, so they must have felt the bill was acceptable when they put their name on the analysis that they were in support. Member Steinmeier reiterated the fact that supporting and sponsoring are different. The Chair agreed they were, and added that, unfortunately, the letters sent to Senator Kopp were not available.

Member Beltrami asked staff if they would be looking at both cost implication and cost savings when working on the parameters and guidelines. Ms. Higashi noted that the normal process is for the claimant to submit proposed parameters and guidelines, which are distributed for comment. She added that staff reviews the entire package. Chairperson Porini asked if Member Beltrami was asking if the staff recommendation should talk about offsetting savings. Member Beltrami thought that it did, but wanted to make sure it was covered. Ms. Shelton replied that, in the parameters and guidelines, claimants are only entitled to claim increased costs, so if there were cost savings because of the clarifications provided, they would not be eligible for reimbursement for that. Ms. Higashi added that the offsetting savings language is included in a standard paragraph that is in all parameters and guidelines.

Member Steinmeier moved approval of staff's recommendation. Member Beltrami seconded the motion. The motion carried 4-2, with Chairperson Porini and Member Williams voting "No."

INCORRECT REDUCTION CLAIMS

- Item 3 *Graduation Requirements* – CSM - 4435-I-03, 4435-I-05, 4435-I-07 to 12
Palos Verdes Peninsula Unified School District, Sweetwater Union High
School District, Vista Unified School District, San Luis Coastal Unified
School District, Lompoc Unified School District, Huntington Beach
Unified School District, Fresno Unified School District, Santa Monica-
Malibu Unified School District, Claimants
Education Code Section 51225.3, Statutes of 1983, Chapter 498

Cathy Cruz of the Commission staff presented this item. She noted that the staff analysis addresses the incorrect reduction claims (IRCs) filed by eight school districts on the Graduation Requirements program. Ms. Cruz noted that the State Controller's Office (SCO) asserted that it adjusted the subject reimbursement claims based on the Commission's parameters and guidelines and that the Department of Finance agreed with the SCO.

Ms. Cruz outlined the five issues for the Commission's consideration:

1. Did the SCO exercise its audit authority in accordance with state law when it reduced the reimbursement claims? Staff found SCO did exercise its audit authority in accordance with state law.
2. Did the SCO establish a standard of general application without the benefits of law or the due process of rulemaking? Staff found that the Commission does not have specific or implied authority to make this determination.
3. Did the SCO reduce the reimbursement claims based on the Commission's parameters and guidelines and the claiming instructions? Staff found that the SCO did perform the reductions in accordance with both the claiming instructions and the parameters and guidelines.
4. Does SCO's payment of teachers' salaries on 38 other claims have a bearing on these IRCs? Staff found this argument does not have bearing on these IRCs.

5. Does the SCO have the burden of proof to demonstrate that the claimants are ineligible for reimbursement? Staff found that the SCO does not have the burden of proof.

Ms. Cruz noted that staff therefore found that the SCO did not incorrectly reduce the claimants' reimbursement claims and that staff recommended the Commission deny these IRCs.

Parties were represented as follows: Dr. Carol Berg, for the Education Mandated Cost Network; and Ginny Brummels and Shawn Silva, for the SCO. Ms. Higashi swore in the witnesses.

Dr. Berg commented that this claim is very old and has been discussed at length. She refuted staff's analysis and submitted the following:

- The SCO did a desk review and not an audit; there are no documents supporting the positions or decisions of the SCO.
- Although the Commission does not have the authority to determine whether a rule of general application was applied, it is the parties' obligation to inform the Commission that, possibly inadvertently, that has happened.
- Staff cannot point to anything in the subject statute that requires a local board of education to reduce an elective program because the statute requires a new mandated course.
- The 38 other claims were only cited to refer to the fact that the SCO auditors doing desk reviews created a formula that was acceptable and that only 38 claimants had access to that information.
- The SCO does have the burden to prove, via audit working papers, the rationale and arithmetic used in order to reduce the claim.

Mr. Silva contended that the issues here are exactly those as raised in the San Jose and San Diego claims. He submitted that the analysis found in those cases as well as the recommendations and analysis of staff in this case are correct. Mr. Silva argued that staff had previously addressed the 38 paid claims and demonstrated why they were realistic payments.

Member Beltrami asked Mr. Silva to respond to Dr. Berg's point that the law does not say there should be a staff offset. Mr. Silva replied that the offset is not specifically derived from the test claim statute, however, it is found within the statutes governing state mandates. Mr. Silva contended that a cost must be incurred to impose a reimbursable state mandate. He further argued that, within the bill creating the requirement for the additional year of science instruction was also a provision giving the authority and power for the local school agencies to lay off teachers if state requirements forced them to adjust their curriculum. Mr. Silva submitted that if districts did not lay off teachers to offset costs, then it is an optional cost and therefore not reimbursable.

Member Steinmeier commented that, unfortunately, it seems to be the failure of school districts to produce documentation showing a cost savings or increase. She asked Dr. Berg why districts had not been able to produce such documentation. Dr. Berg explained that, in 1983, districts were told not to do anything differently and now the staff working in those districts

are gone, so producing documentation is impossible at this point. She added that, with one exception, the eight claimants were small districts. Member Steinmeier figured that no one had the foresight to hang on to this documentation because no one thought the claim would drag on this long. Dr. Berg agreed.

On motion by Member Beltrami and second by Member Sherwood, staff's recommendation was unanimously adopted.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 5 *County Treasury Oversight Committees - 96-365-03*
County of San Bernardino, Claimant
Government Code Sections 27130 et seq.
Statutes of 1995, Chapter 784; Statutes of 1996, Chapter 156

This item was postponed.

EXECUTIVE DIRECTOR'S REPORT

- Item 10 Workload, Legislation, Next Agenda

Paula Higashi, Executive Director, reported the following:

- *Regulation Workshop.* Following today's hearing, staff will hold a workshop on development of regulations to implement AB 1679.
- *Workload.* A workload report is included in the agenda binders.
- *Regulations.* The regulations are all in print and copies have been provided to the public.
- *Budget.* The Commission's budget was approved last week by the Assembly subcommittee and will now go to conference.
- *Legislation.*
 - The local government claims bill, AB 348, is set for hearing today in the Senate Appropriations Committee. Senator Kuehl is carrying the bill. Staff will request amendments to the bill to include all Statewide Cost Estimates adopted through May 2001.
 - The *Special Education Settlement Bill* [SB 982] was approved by the Senate and is now in the Assembly.
 - The Mandate Reform Bill, AB 745 (Cox), is in the [Assembly Appropriations Committee]suspense file.
 - The Department of Education's budget item on the *School Bus Safety II* mandate will be a Conference Committee issue.

- *Deficiencies.* The State Controller's Office issued its deficiency letter on May 10, 2001. The Department of Finance approved the requested transfers, and a deficiency of \$242,755,148 remains.

Member Sherwood noticed the significant progress on incorrect reduction claims, but questioned why the progress on test claims had slowed in recent months. Ms. Higashi replied that many test claims are in progress. She explained that many test claims had been postponed at the request of the parties, but also that the Commission is down two staff positions, including Chief Legal Counsel. Ms. Higashi added that the Commission also has a substantial litigation workload, which is listed on the closed agenda. Member Sherwood asked if the requests for postponements were from both the claimants and the Department of Finance. Ms. Higashi confirmed that they were. She noted that the DOF typically requests postponements due to the budget or litigation processes, and that many of the claimants have experienced turnover in staff.

Member Sherwood asked Ms. Higashi if she had a sense of urgency from the claimants as to the process. Dr. Carol Berg replied that the process is understandable and mutual and they are being patient as well.

Member Beltrami noted that one of today's items dated back to 1983 and asked if many more antiquated claims exist. Ms. Higashi replied that there are a few, but not quite that old. She reminded the Commission that, last year, many of the older inactive items were set for dismissal and some of those were taken over by new claimants. Ms. Higashi stated that staff is working diligently through the claims. She also noted that there are many pending test claims with complex legal issues.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *Carmel Valley Fire Protection Dist. v. State of California, et al.*, Case Number S078828, California Supreme Court.
2. *County of San Bernardino v. State of California, et al.*, Case Number B140704 in the Appellate Court of California, Second Appellate District, Division 2.
3. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number GIC 737638, in the Superior Court of the State of California, County of San Diego.
4. *Department of Finance v. Commission on State Mandates, et al.*, Case Number 00CS01446, in the Superior Court of the State of California, County of Sacramento.
5. *Long Beach Unified School District v. Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.

6. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
7. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number C037645, in the Court of Appeal, Third Appellate District.
8. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC751187, in the Superior Court of the State of California, County of San Diego.
9. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
10. *County of San Bernardino v. Commission on State Mandates, et al.* Case Number SCVSS69731, in the Superior Court of the State of California, County of San Bernardino.
11. *County of San Bernardino v. Joann E. Steinmeier, et al., Commission on State Mandates of the State of California et al.*, Case Number SCVSS72444, in the Superior Court of the State of California, County of San Bernardino.
12. *County of San Diego v. Commission on State Mandates, et al.*, Case Number GIC762953, in the Superior Court of the State of California, County of San Diego.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee on the selection and appointment of the Chief Legal Counsel (C.E.A. 3) pursuant to Government Code sections 17529 and 19889 et seq. and the evaluation of the Executive Director.

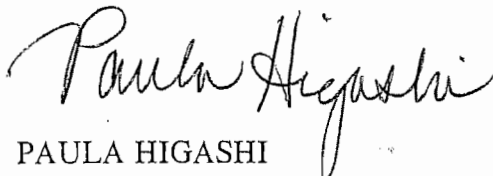
Chairperson Porini announced that the Commission would meet in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda and Government Code sections 11126, subdivision (a) and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Porini reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda and Government Code sections 11126, subdivision (a) and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

With no further business, the Chair adjourned the meeting at 11:46 a.m.

A handwritten signature in black ink, reading "Paula Higashi". The signature is fluid and cursive, with the first name "Paula" and last name "Higashi" clearly distinguishable.

PAULA HIGASHI
Executive Director

f:/meetings/minutes/2001/052401

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
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May 25, 2001

Ms. Pamela A. Stone
DMG-Maximus, Inc.
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mr. Paige Vorhies, Bureau Chief
State Controller's Office
Division of Accounting & Reporting (B-8)
3301 C Street, Suite 500
Sacramento, CA 95816

And Affected State Agencies and Interested Parties (See Attached Mailing List)


RE: **Adopted Parameters and Guidelines**
Extended Commitment – Youth Authority, CSM 98-TC-13
Welfare and Institutions Code Sections 1800, 1801 and 1801.5
Statutes of 1984, Chapter 546
Statutes of 1998, Chapter 267

Dear Ms. Stone and Mr. Vorhies:

On May 25, 2001, the Commission on State Mandates adopted the Parameters and Guidelines for this test claim.

A copy of the final Parameters and Guidelines is enclosed. If you have any questions, please contact Ms. Cathy Cruz at (916) 323-8216.

Sincerely,


PAULA HIGASHI
Executive Director

Enclosure

F:\Mandates\1998\tc\98tc13\PsGs\pgadottr

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Welfare and Institutions Code Sections 1800, 1801 and 1801.5, as amended by Statutes of 1984, Chapter 546 and Statutes of 1998, Chapter 267;

Filed on May 10, 1999

By the County of Alameda, Claimant.

No. 98-TC-13

Extended Commitment, Youth Authority

ADOPTION OF PARAMETERS AND
GUIDELINES PURSUANT TO
GOVERNMENT CODE SECTION 17557
AND TITLE 2, CALIFORNIA CODE OF
REGULATIONS, SECTION 1183.12

(Adopted on May 24, 2001)

ADOPTED PARAMETERS AND GUIDELINES

The attached Parameters and Guidelines is hereby adopted in the above-entitled matter.

This Decision shall become effective on May 25, 2001.



PAULA HIGASHI, Executive Director

Parameters and Guidelines

Welfare and Institutions Code Sections 1800, 1801 and 1801.5

Statutes of 1984, Chapter 546

Statutes of 1998, Chapter 267

Extended Commitment – Youth Authority

I. SUMMARY AND SOURCE OF THE MANDATE

The test claim legislation requires the district attorney to represent the Youthful Offender Parole Board (YOPB) in civil commitment procedures for the continued involuntary treatment of persons that the YOPB has determined would pose a physical danger to the public if released from the Youth Authority.

On January 25, 2001, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that Welfare and Institutions Code section 1800 imposes a reimbursable state-mandated program upon counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities performed by the prosecuting attorney:

- Reviewing the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
- Preparing and filing petitions with the superior court for the extended commitment of dangerous CYA wards;
- Representing the state in preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards; and
- Retaining necessary experts, investigators, and professionals to prepare for preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards.

The Commission further concluded that costs incurred by counties for indigent representation by public defenders, custody, and transportation are ineligible for reimbursement under article XIII B, section 6 of the California Constitution and Government Code section 17514 because these costs resulted from statutes enacted prior to January 1, 1975.

II. ELIGIBLE CLAIMANTS

Any county or city and county.

III. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. This test claim was filed by the County of Alameda on May 10, 1999. Therefore, costs

incurred for Statutes of 1984, chapter 546 are eligible for reimbursement on or after July 1, 1997.¹

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included in the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days from the date on which the State Controller issues claiming instructions.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, the direct and indirect costs of labor, materials and supplies, contracted services, fixed assets, travel, and training incurred for the following mandate components are reimbursable:

A. One-time Activities

1. Developing internal policies, procedures, manuals and other materials pertaining to the district attorney representing the YOPB in extended commitment proceedings of CYA wards.
2. Providing each person employed by the district attorney's office that works on the mandated program with training, publication, and information regarding extended commitment proceedings and criteria for determining whether the ward poses a danger to the public due to the individual's mental or physical deficiency, disorder, or abnormality (one-time per employee).

B. Continuing Activities

Administrative

1. Updating internal policies, procedures, manuals and other materials pertaining to the district attorney representing the YOPB in extended commitment proceedings of CYA wards to reflect changes in law due to a court's interpretation of the test claim legislation.
2. Developing and maintaining manual or electronic files pertaining to the district attorney representing the YOPB in extended commitment proceedings of CYA wards.

Extended Commitment Proceedings

Counties are entitled to reimbursement for the following activities only after the YOPB determines that the discharge of a person from the control of the Youth Authority at the stated time would be physically dangerous to the public, and the YOPB requests representation of the district attorney in extended commitment proceedings pursuant to Welfare and Institutions Code section 1800:

3. Reviewing the YOPB's written statement of facts, and files and records, upon which the YOPB bases its opinion that discharge from control of the Youth Authority at the time stated would be physically dangerous to the public.

¹ Statutes of 1998, chapter 267 did not impose any new reimbursable activities on counties.

4. Preparing and filing petitions and supporting documentation with the superior court for the extended commitment, and subsequent recommitment, of CYA wards determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority.
5. Representing the state in probable cause hearings, civil trials, and hearings on motions in the superior court pertaining to the extended commitment, and subsequent recommitment of CYA wards determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority.
6. Retaining or hiring necessary experts, investigators, and professionals to prepare for probable cause hearings and civil trials pertaining to the extended commitment, and subsequent recommitment, of CYA wards determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority.

Costs to subpoena witnesses, including witness fees and expert witness fees, are reimbursable under this activity.

7. If the district attorney deems it necessary, traveling to and from state hospitals or the ward's place of confinement to obtain medical records, case files, and interview prospective witnesses pertaining to the extended commitment, and subsequent recommitment, of any CYA ward determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority.

V. CLAIM PREPARATION AND SUBMISSION

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document and they must be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions and shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee fringe benefits.

Reimbursement includes compensation paid for salaries, wages, and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Employee fringe benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

Identify the expenditures that are a direct cost of this mandate. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be

claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

4. Fixed Assets

List the costs of the fixed assets that have been acquired specifically for the purpose of this mandate. If the fixed mandate is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset which is used for the purposes of the mandated program is eligible for reimbursement.

5. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points and travel costs.

6. Training

The cost of training an employee to perform the mandated activities, as specified in section IV of these parameters and guidelines, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem. If the training encompasses subjects broader than this mandate, only the pro rata portion of the training costs can be claimed.

B. Indirect Costs

Compensation for indirect costs is eligible for reimbursement. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) pursuant to the Office of Management and Budget (OMB) Circular A-87.

VI. SUPPORTING DATA

For auditing purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested. Pursuant to Government Code section 17558.5, these documents must be kept on file by the agency submitting the claim for a period of no less than two years after the later of (1) the end of the calendar year in which the reimbursement claim is filed or last amended, or (2) if no funds are appropriated for the fiscal year for which the claim is made, the date of initial payment of the claim.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to service fees collected, federal funds and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the state contained herein.

IX. PARAMETERS AND GUIDELINES AMENDMENTS

Pursuant to Title 2, California Code of Regulations, section 1183.2, Parameters and Guidelines amendments filed before the deadline for initial claims as specified in the Claiming Instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. A Parameters and Guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15, following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.

Commission on State Mandates

List Date: 05/17/1999

Mailing Information

Mailing List

Claim Number 98-TC-13 Claimant County of Alameda

Subject Chap. 546/84 & 267/98
Issue Extended Commitment - Youth Authority

Mr. Lawrence G. Brown, Executive Director
California District Attorneys Association
California District Attorneys Association
731 K Street 3rd Floor
Sacramento CA 95814
Tel: (916) 443-2017
FAX: (916) 445-0540

Mr. Allan Burdick,
DMG-MAXIMUS
4320 Auburn Blvd. Suite 2000
Sacramento CA 95841
Tel: (916) 485-8102
FAX: (916) 485-0111

Mr. Michael E. Cantrall, Executive Director
California Public Defenders Association
3273 Ramos Circle, Suite 100
Sacramento CA 95827
Tel: (916) 362-1686
FAX: (916) 362-5498

Mr. Leonard Kaye, Esq.,
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles CA 90012
Tel: (213) 974-8564
FAX: (213) 617-8106

Mr. John Logger, Reimbursable Projects Manager
Auditor-Controller's Office
222 West Hospitality Lane
San Bernardino CA 92415-0018
Tel: (909) 386-8850
FAX: (909) 386-8830

Subject

Chap. 546/84 & 267/98

Issue

Extended Commitment - Youth Authority

Mr. James Lombard, Principal Analyst (A-15)
Department of Finance

915 L Street
Sacramento CA 95814

Tel: (916) 445-8913
FAX: (916) 327-0225

Interested Party

Ms. Laurie McVay,
DMG-MAXIMUS

4320 Auburn Blvd. Suite 2000
Sacramento CA 95841

Tel: (916) 485-8102
FAX: (916) 485-0111

Mr. Andy Nichols, Senior Manager
Centration, Inc.

12150 Tributary Point Drive, Suite 150
Gold River CA 95670

Tel: (916) 351-1050
FAX: (916) 351-1020

Interested Person

Jim Spano,
State Controller's Office
Division of Audits (B-8)
300 Capitol Mall, Suite 518 P.O. Box 942850
Sacramento CA 95814

Tel: (916) 323-5849
FAX: (916) 324-7223

Ms. Pam Stone, Legal Counsel
DMG-MAXIMUS

4320 Auburn Blvd. Suite 2000
Sacramento CA 95841

Tel: (916) 485-8102
FAX: (916) 485-0111

Mr. Paige Vorhies, Bureau Chief (B-8)
State Controller's Office
Division of Accounting & Reporting
3301 C Street Suite 500
Sacramento CA 95816

Tel: (916) 445-8756
FAX: (916) 323-4807

Interested Party

Claim Number

98-TC-13

Claimant

County of Alameda

Subject

Chap. 546/84 & 267/98

Issue

Extended Commitment - Youth Authority

Ms. Susan C. Wallace, Executive Officer
Youthful Offender Parole Board

1029 J Street, Suite 500
Sacramento CA 95814

Tel: (916) 322-9800
FAX: (916) 322-8802

COMMISSION ON STATE MANDATES
PROPOSED NOTICE AND AGENDA ¹

State Capitol, Room 126
Sacramento, California

January 24, 2002

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. ELECTION OF OFFICERS

Item 1 Election of Chairperson and Vice Chairperson

III. APPROVAL OF MINUTES

Item 2 December 12, 2001

IV. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items designated by an asterisk (), the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.*

V. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Items 3-5

A. TEST CLAIMS

Item 3 *Community College District Budget and Financial Reports, Fiscal Management Reports, and Financial and Compliance Audits*
97-TC-10, 11, 12.
Santa Monica Community College District, Claimant
Education Code Sections 84030, 84040 and 84040.5
Statutes of 1977, Chapters 36 and 936; Statutes of 1978, Chapter 207;
Statutes of 1979, Chapter 221; Statutes of 1980, Chapter 884; Statutes of
1981, Chapters 470, 471, 930 and 1178; Statutes of 1983, Chapter 1206;
Statutes of 1984, Chapters 609 and 1282; Statutes of 1986, Chapter 1486;
Statutes of 1987, Chapter 1025; Statutes of 1990, Chapter 1372; Statutes
of 1994, Chapter 20; California Code of Regulations, Title 5, Sections
58300-58301, 58303- 58308, 58310-58312, 58314, 58316, 58318, 59100,
59102, 59104, 59106, 59108, 59110, 59112, and 59114; 1991 California
Community Colleges Contracted District Audit Manual and subsequent
revisions through June 1996; 1993 California Community Colleges Budget
and Accounting Manual and subsequent Accounting Advisories dated
through May 30, 1997

¹ This public meeting notice is available on the Internet at <http://www.csm.ca.gov>.

B. PROPOSED STATEMENTS OF DECISION - INCORRECT REDUCTION CLAIMS

Item 4* *Graduation Requirements*, 4435-I-35
Grossmont Union High School District, Claimant
Education Code Section 51225.3
Statutes of 1983, Chapter 498

Item 5* *Graduation Requirements*, 4435-I-06 & 4435-I-38
Clovis Unified School District, Claimant
Education Code Section 51225.3
Statutes of 1983, Chapter 498

VI. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 6* *School District Fiscal Accountability Reporting*, 97-TC-19 (Formerly known as, Budget Process Financial Statements, and County Oversight)
Alameda County Office of Education, Claimant
Education Code Sections 42100, 42127, 42127.5, 42127.6, 42128, 42131, and Government Code Section 3540.2
Statutes of 1981, Chapter 100; Statutes of 1985, Chapter 185; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapters 917 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1990, Chapter 525; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 923 and 924; Statutes of 1994, Chapter 650 and 1002; and Statutes of 1995, Chapter 525

Item 7* *County Office of Education Fiscal Accountability Reporting (formerly known as, County Office Budget Process and Financial Statements)*, 97-TC-20
Alameda County Office of Education, Claimant
Education Code Sections 1240, subdivision (j) 1240.2, 1620, 1622, 1625, 1628, 1630
Statutes of 1987, Chapters 917 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1990, Chapter 1372; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 923 and 924; Statutes of 1994, Chapters 650 and 1002; Statutes of 1995, Chapter 525

Item 8* *Employee Benefits Disclosure*, CSM-4502, 98-TC-03
Clovis Unified School District & Sweetwater Unified High School District, Claimants
Education Code Sections 42140 and 42142
Statutes of 1994, Chapter 650; Statutes of 1995, Chapter 525; Statutes of 1996, Chapter 1158

- Item 9* *Law Enforcement College Jurisdiction* (formerly known as Campus Safety Plans), 98-TC-20
 Contra Costa Community College District, Claimant
 Education Code Sections 67381
 Statutes of 1998, Chapter 284
- Item 10 *Standardized Testing and Reporting*, 97-TC-23
 San Diego Unified School District, Claimant
 Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643
 Statutes of 1997, Chapter 828; Title 5, California Code of Regulations, Sections 850-904

B. STATEWIDE COST ESTIMATES

- Item 11* *Sexual Harassment Training in the Law Enforcement Workplace*, 97-TC-07
 County of Los Angeles, Claimant
 Penal Code Section 13519.7
 Statutes of 1993, Chapter 126
- Item 12* *Mentally Disordered Offenders' Extended Commitment Proceedings*, 98-TC-09
 County of Los Angeles, Claimant
 Penal Code Sections 2970, 2972, and 2972.1
 Statutes of 1985, Chapter 1418; Statutes of 1986, Chapter 858; Statutes of 1987, Chapter 687; Statutes of 1988, Chapters 657 and 658; Statutes of 1989, Chapter 228; Statutes of 1991, Chapter 435; and Statutes of 2000, Chapter 324
- Item 13* *Elder Abuse Law Enforcement Training*, 98-TC-12
 City of Newport Beach, Claimant
 Penal Code Section 13515
 Statutes of 1997, Chapter 444
- Item 14* *Extended Commitment – Youth Authority*, 98-TC-13
 County of Alameda, Claimant
 Welfare and Institutions Code Sections 1800, 1801 and 1801.5
 Statutes of 1984, Chapter 546; Statutes of 1998, Chapter 267

C. ADOPTION OF ANNUAL RULEMAKING CALENDAR

- Item 15* 2002 Rulemaking Calendar (Gov. Code, § 11017.6.)

EXECUTIVE DIRECTOR'S REPORT (info)

- Item 16 Workload, Legislation, Next Agenda

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.*, Case Number B140704, in the Appellate Court of California, Second Appellate District, Division 2.
2. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number D038027, in the Appellate Court of California, Fourth Appellate District, Division 1.
3. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
4. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number C037645, in the Appellate Court of California, Third Appellate District.
5. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of California, Fourth Appellate District.
6. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
7. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Superior Court of the State of California, County of Los Angeles.
8. *County of San Bernardino v. Commission on State Mandates of the State of California et al.*, Case Number SCVSS72444, in the Superior Court of the State of California, County of San Bernardino.
9. *County of San Diego v. Commission on State Mandates, et al.*, Case Number GIC762953, in the Superior Court of the State of California, County of San Diego.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i)).

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

IX. REPORT FROM CLOSED EXECUTIVE SESSION

ADJOURNMENT

For information, contact:

Paula Higashi, Executive Director
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
(916) 445-0278 Fax

Item 14

Statewide Cost Estimate

Welfare and Institutions Code Sections 1800, 1801 and 1801.5

Statutes of 1984, Chapter 546

Statutes of 1998, Chapter 267

Extended Commitment—Youth Authority

Executive Summary

The test claim legislation requires the district attorney to represent the Youthful Offender Parole Board (YOPB) in civil commitment procedures for the continued involuntary treatment of persons that the YOPB has determined would pose a physical danger to the public if released from the Youth Authority.

The County of Alameda filed the test claim on May 10, 1999. The Commission adopted the Statement of Decision on January 25, 2001, and the Parameters and Guidelines on May 24, 2001. Costs incurred for Statutes of 1984, Chapter 546 are eligible for reimbursement on or after July 1, 1997.¹

Methodology

To arrive at the total statewide cost estimate:

- Staff used unaudited actual claim totals filed with the State Controller for prior fiscal years (FYs) by eligible claimants.²
- Staff projected totals for FY 2001-02 by multiplying the FY 2000-01 claim total filed by claimants with the State Controller's Office times the implicit price deflator for 2001-02 (2.7%), as forecasted by the Department of Finance. Staff projected totals for FY 2002-03 by multiplying the 2001-02 estimate by the implicit price deflator for 2002-03 (2.1%).

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of \$183,000 for costs incurred in complying with the *Extended Commitment—Youth Authority* provisions.

¹ Statutes of 1998, Chapter 267 did not impose any new reimbursable activities on counties.

² State Controller's Office data as of December 27, 2001.

Following is a breakdown of estimated total costs per fiscal year:

Fiscal year	# Claims Filed With SCO	Claim Totals
1997-98	3	\$18,544
1998-99	6	\$75,583
1999-00	5	\$19,992
2000-01	5	\$22,463
2001-02 (2.7% ³)	n/a	\$23,070
2002-03 (2.1% ⁴)	n/a	\$23,554
Total		\$183,206
Statewide Cost Estimate Total (Rounded)		\$183,000

Because the reported costs are prior to audit and partially based on estimates, the statewide cost estimate of \$183,206 has been rounded to \$183,000.

³ Implicit Price Deflator as forecast by Department of Finance.

⁴ *ibid.*

Statewide Cost Estimate

Welfare and Institutions Code Sections 1800, 1801 and 1801.5

Statutes of 1984, Chapter 546

Statutes of 1998, Chapter 267

Extended Commitment—Youth Authority

Mandate Background

The test claim legislation requires the district attorney to represent the Youthful Offender Parole Board (YOPB) in civil commitment procedures for the continued involuntary treatment of persons that the YOPB has determined would pose a physical danger to the public if released from the Youth Authority.

The County of Alameda filed the test claim on May 10, 1999. The Commission adopted the Statement of Decision on January 25, 2001, and the Parameters and Guidelines on May 24, 2001. Costs incurred for Statutes of 1984, Chapter 546 are eligible for reimbursement on or after July 1, 1997.⁵

Eligible Claimants

Any county or city and county.

Reimbursable Activities

For each eligible claimant, the direct and indirect costs of labor, materials and supplies, contracted services, fixed assets, travel, and training incurred for the following mandate components are reimbursable:

A. One-time Activities

1. Developing internal policies, procedures, manuals and other materials pertaining to the district attorney representing the YOPB in extended commitment proceedings of CYA wards.
2. Providing each person employed by the district attorney's office that works on the mandated program with training, publication, and information regarding extended commitment proceedings and criteria for determining whether the ward poses a danger to the public due to the individual's mental or physical deficiency, disorder, or abnormality (one-time per employee).

⁵ Statutes of 1998, Chapter 267 did not impose any new reimbursable activities on counties.

B. Continuing Activities

Administrative

1. Updating internal policies, procedures, manuals and other materials pertaining to the district attorney representing the YOPB in extended commitment proceedings of CYA wards to reflect changes in law due to a court's interpretation of the test claim legislation.
2. Developing and maintaining manual or electronic files pertaining to the district attorney representing the YOPB in extended commitment proceedings of CYA wards.

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Counties are entitled to reimbursement for the following activities only after the YOPB determines that the discharge of a person from the control of the Youth Authority at the stated time would be physically dangerous to the public, and the YOPB requests representation of the district attorney in extended commitment proceedings pursuant to Welfare and Institutions Code section 1800:

3. Reviewing the YOPB's written statement of facts, and files and records, upon which the YOPB bases its opinion that discharge from control of the Youth Authority at the time stated would be physically dangerous to the public.
4. Preparing and filing petitions and supporting documentation with the superior court for the extended commitment, and subsequent recommitment, of CYA wards determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority.
5. Representing the state in probable cause hearings, civil trials, and hearings on motions in the superior court pertaining to the extended commitment, and subsequent recommitment of CYA wards determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority.
6. Retaining or hiring necessary experts, investigators, and professionals to prepare for probable cause hearings and civil trials pertaining to the extended commitment, and subsequent recommitment, of CYA wards determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority.

Costs to subpoena witnesses, including witness fees and expert witness fees, are reimbursable under this activity.

7. If the district attorney deems it necessary, traveling to and from state hospitals or the ward's place of confinement to obtain medical records, case files, and interview prospective witnesses pertaining to the extended commitment, and subsequent recommitment, of any CYA ward determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority.

Assumptions

Staff made the following assumptions:

- The claiming data is accurate, although unaudited.
- There will not be any late claims filed.⁶

Methodology

To arrive at the total statewide cost estimate:

- Staff used unaudited actual claim totals filed with the State Controller for prior fiscal years (FYs) by eligible claimants.⁷
- Staff projected totals for FY 2001-02 by multiplying the FY 2000-01 claim total filed by claimants with the State Controller's Office times the implicit price deflator for 2001-02 (2.7%), as forecasted by the Department of Finance. Staff projected totals for FY 2002-03 by multiplying the 2001-02 estimate by the implicit price deflator for 2002-03 (2.1%).

Staff Recommendation

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Total		\$183,206
Statewide Cost Estimate Total (Rounded)		\$183,000

Because the reported costs are prior to audit and partially based on estimates, the statewide cost estimate of \$183,206 has been rounded to \$183,000.

⁶ If the Legislature appropriates the amount of the statewide cost estimate and actual claims exceed this amount, the State Controller's Office will prorate the claims. If the deficiency funds are not appropriated in the Budget Act, the Controller will report this information to the legislative budget committees and the Commission on State Mandates. The Commission will then include the deficiency in its report to the Legislature in order to ensure that it is included in the next claims bill.

⁷ State Controller's Office data as of December 27, 2001.

⁸ Implicit Price Deflator as forecast by Department of Finance.

⁹ *ibid.*

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PUBLIC HEARING
COMMISSION ON STATE MANDATES

RECEIVED
JAN 31 2002
COMMISSION ON
STATE MANDATES

--oOo--

ORIGINAL

TIME: 9:30 a.m.

DATE: January 24, 2002

PLACE: State Capitol, Room 126
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported By: YVONNE K. FENNER, CSR License #10909, RPR

A P P E A R A N C E S

COMMISSION MEMBERS

ANNETTE PORINI, Chairperson
Representative of B. Timothy Gage, Director
State Department of Finance

SHERRY WILLIAMS
Representative of Steven Nissen, Director
Office of Planning and Research

JOHN HARRIGAN
Representative of Kathleen Connell
State Controller

JOHN S. LAZAR
City Council Member
Turlock City Council

WILLIAM SHERWOOD
Representative of Philip Angelides
State Treasurer

JOANN E. STEINMEIER
School Board Member
Arcadia Unified School District

COMMISSION STAFF

PAULA HIGASHI, Executive Director

PAUL STARKEY, Chief Legal Counsel

CATHERINE M. CRUZ, Program Analyst

NANCY PATTON, Staff ~~counsel~~ *Services Manager*

CAMILLE SHELTON, Staff Counsel

KATHERINE TOKARSKI, Staff Counsel

--o0o--

1	12	Informational Hearing, Statewide	10
2		Cost Estimates, Mentally Disordered	
3		Offenders' Extended Commitment	
4		Proceedings	
5	13	Informational Hearing, Statewide	10
6		Cost Estimates, Elder Abuse Law	
7		Enforcement Training	
8	14	Informational Hearing, Statewide	10
9		Cost Estimates, Extended Commitment-	
10		Youth Authority	
11	15	Informational Hearing, Adoption of	10
12		Annual Rulemaking Calendar, 2002	
13	16	Executive Director's Report	77

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1 consent calendar. The proposed consent calendar now
2 consists of Items 4 and 5, the proposed statements of
3 decision on the Graduation Requirements incorrect
4 reduction claims, and Items 11, 12, 13, and 14, all the
5 proposed statewide cost estimates, and Item 15, the
6 Commission's 2002 rulemaking calendar.

7 Just to let you know, Items 6 through 10 have
8 been removed from the consent calendar because parties
9 have notified the Commission staff their desire to
10 testify.

11 MS. STEINMEIER: Move approval of the consent
12 calendar.

13 MR. LAZAR: Second.

14 CHAIRPERSON PORINI: All right. We have a
15 motion and a second to approve the consent calendar.
16 All those in favor indicate with "aye."

17 MULTIPLE SPEAKERS: Aye.

18 CHAIRPERSON PORINI: Opposed?

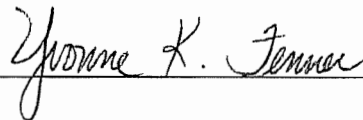
19 The consent calendar carries.

20 MS. HIGASHI: This brings to us Item 3, which is
21 the hearing on our test claims on the Community College
22 District Budget and Financial Reports, Fiscal Management
23 Reports, and Financial and Compliance Audits. This item
24 will be presented by our new staff counsel, Katherine
25 Tokarski.

REPORTER'S CERTIFICATE

I hereby certify the foregoing hearing was held at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

In witness whereof, I have hereunto set my hand this 31st day of January, 2002.



Yvonne K. Fenner
Certified Shorthand Reporter
License No. 10909

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126

Sacramento, California

January 24, 2002

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Sherry Williams
Representative of the Director of the Office of Planning and Research
Member John Harrigan
Representative of the State Controller
Member Joann Steinmeier
School Board Member
Member John Lazar
City Council Member
Vacant: Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:41 a.m.

ELECTION OF OFFICERS

Item 1 Election of Chairperson and Vice Chairperson

Paula Higashi, Executive Director, noted that state law requires the members to elect a chairperson and vice chairperson for the Commission on State Mandates. She added that under Robert's Rules of Order, nominations may be made and a vote taken, or a motion and a second may be made to elect a specific member as chairperson or vice chairperson.

Member Sherwood nominated Timothy Gage, the Director of the Department of Finance, represented by Ms. Annette Porini, as Chair. With a second by Member Williams, Mr. Gage was unanimously elected. Chairperson Porini nominated Phil Angelides, State Treasurer, represented by Mr. Bill Sherwood, as Vice Chair. With a second by Member Steinmeier, Mr. Angelides was unanimously elected.

APPROVAL OF MINUTES

Item 2 December 12, 2001

Upon motion by Member Williams and second by Member Sherwood, the minutes were unanimously adopted.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

PROPOSED STATEMENTS OF DECISION - INCORRECT REDUCTION CLAIMS

- Item 4 *Graduation Requirements*, 4435-I-35
Grossmont Union High School District, Claimant
Education Code Section 51225.3
Statutes of 1983, Chapter 498
- Item 5 *Graduation Requirements*, 4435-I-06 & 4435-I-38
Clovis Unified School District, Claimant
Education Code Section 51225.3
Statutes of 1983, Chapter 498

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

STATEWIDE COST ESTIMATES

- Item 11 *Sexual Harassment Training in the Law Enforcement Workplace*, 97-TC-07
County of Los Angeles, Claimant
Penal Code Section 13519.7
Statutes of 1993, Chapter 126
- Item 12 *Mentally Disordered Offenders' Extended Commitment Proceedings*, 98-TC-09
County of Los Angeles, Claimant
Penal Code Sections 2970, 2972, and 2972.1
Statutes of 1985, Chapter 1418; Statutes of 1986, Chapter 858; Statutes of 1987, Chapter 687; Statutes of 1988, Chapters 657 and 658; Statutes of 1989, Chapter 228; Statutes of 1991, Chapter 435; and Statutes of 2000, Chapter 324
- Item 13 *Elder Abuse Law Enforcement Training*, 98-TC-12
City of Newport Beach, Claimant
Penal Code Section 13515
Statutes of 1997, Chapter 444
- Item 14 *Extended Commitment – Youth Authority*, 98-TC-13
County of Alameda, Claimant
Welfare and Institutions Code Sections 1800, 1801, and 1801.5
Statutes of 1984, Chapter 546; Statutes of 1998, Chapter 267

ADOPTION OF ANNUAL RULEMAKING CALENDAR

- Item 15 2002 Rulemaking Calendar (Gov. Code, § 11017.6.)

Member Steinmeier moved for adoption of the consent calendar. With a second by Member Lazar, the consent calendar, consisting of items 4, 5, 11, 12, 13, 14, and 15, was unanimously adopted.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

TEST CLAIM

- Item 3 *Community College District Budget and Financial Reports, Fiscal Management Reports, and Financial and Compliance Audits*
97-TC-10, 11, 12
Santa Monica Community College District, Claimant
Education Code Sections 84030, 84040, and 84040.5
Statutes of 1977, Chapters 36 and 936; Statutes of 1978, Chapter 207;
Statutes of 1979, Chapter 221; Statutes of 1980, Chapter 884; Statutes of
1981, Chapters 470, 471, 930, and 1178; Statutes of 1983, Chapter 1206;
Statutes of 1984, Chapters 609 and 1282; Statutes of 1986, Chapter 1486;
Statutes of 1987, Chapter 1025; Statutes of 1990, Chapter 1372; Statutes
of 1994, Chapter 20; California Code of Regulations, Title 5, Sections
58300-58301, 58303- 58308, 58310-58312, 58314, 58316, 58318, 59100,
59102, 59104, 59106, 59108, 59110, 59112, and 59114; 1991 California
Community Colleges Contracted District Audit Manual and subsequent
revisions through June 1996; 1993 California Community Colleges Budget
and Accounting Manual and subsequent Accounting Advisories dated
through May 30, 1997

Katherine Tokarski, Commission Counsel, presented this item. She announced that an errata sheet had been provided for item 3. She noted that the claimant filed three test claims alleging reimbursable state-mandated costs for activities performed by community college districts for periodically preparing and submitting various budget and fiscal management reports to the state, and for engaging in annual financial and compliance audits in compliance with the test claim legislation and executive orders. The three test claims were consolidated for hearing due to the overlap between the claims, including shared exhibits and correspondence.

Ms. Tokarski stated that the Department of Finance's position is that the test claim legislation does not constitute new programs or higher levels of service within existing programs. She added that the Department of Finance contends that the challenged internal accounting functions and fiscal responsibility standards are part of the community college districts' normal overhead and operating costs. She also noted the claimant's contention that the test claim legislation does require specific new activities related to the administration of district budgets, audits, and fiscal management practices.

Ms. Tokarski explained staff's finding that community college districts were required under prior law to engage in extensive budget, fiscal management, and audit activities, following a standardized accounting system as expressed in a state-published accounting manual. She further explained that prior law required districts to have an annual audit using audit standards and procedures prescribed by the State and performed by a CPA at the expense of community

college districts. Therefore, staff found that use of the Budget and Accounting Manuals and the Audit Manual do not constitute new programs or higher levels of service.

Ms. Tokarski also indicated that the 22 Title 5 regulations included in the test claim are continuations of prior law. She noted the claimant's assertion that a gap existed between the repeal of certain Education Code sections and the enactment of each of the corresponding regulations. The claimant concluded that even if the regulations were identical to corresponding Education Code sections, they were new and should be a reimbursable state mandate. However, Ms. Tokarski quoted Statutes of 1990, chapter 1372, section 708, subdivision (a), and asserted that the legislature has the authority to make the operative date of any part of a statute dependent upon a contingency. Accordingly, staff found that the statutes named in section 708, subdivision (a), continued in legal, operative effect until corresponding regulations were adopted, thereby avoiding a gap in the legal requirements.

Ms. Tokarski stated that staff found five regulations to impose new programs or higher levels of service within existing audit or budget programs for specific new activities. She also acknowledged that an error was made in the analysis regarding regulation section 58313, Requirement for Employee Indemnity Bond. She explained that a gap in the law did occur, and therefore, staff changed its conclusion for this section.

Staff recommended that the Commission approve the test claim for the specific new community college district activities as set forth in the conclusion of the staff analysis, with the modifications expressed in the errata sheet.

Parties were represented as follows: Keith Petersen, representing Santa Monica State College; and Ramon de la Guardia and Randy Katz, for the Department of Finance. The witnesses were sworn in.

Member Sherwood requested clarification regarding the errata sheet versus the conclusion in the analysis. Ms. Tokarski provided the clarification, noting that her analysis did not change for any Education Code section that was named as continuing until the corresponding regulation was adopted. The only regulation for which the conclusion was changed is section 58313, Requirement for Employee Indemnity Bond, which is a new program or higher level of service.

Mr. Petersen disagreed with the staff analysis and had three main issues. Two issues related to the test claim's three Education Code sections, which pertain to accounting standards, budget reporting, and audits. He noted staff's conclusion that community college districts, whether part of K-12 or as a separate governmental entity, were required to follow a standardized accounting system as expressed in a state-published accounting manual under prior law.

Mr. Petersen did not disagree. However, he argued that at issue is whether the new accounting manual has additional requirements compared to the manual that existed in 1975. He contended that additional activities were required. Mr. Petersen maintained that there is no support in the staff position to presume that the accounting and audit manuals were the same, and therefore, the documents have to be compared to see if there are new requirements.

The last issue related to the gap in the legal requirements. Mr. Petersen noted that staff only recognized a gap in the law for one or two code sections, whereas the claimant maintains that a gap existed in all 22 of the Title 5 sections. He asserted that staff accurately stated the law of

statutes that go into effect contingently in the future. However, he maintained that none of the cases cited by staff in support of its position apply to the test claims here, because they do not involve issues regarding repealed law. He noted that staff did not provide copies of the cases.

Mr. Petersen argued that legislative intent is not law. He added that once a statute repeals a code section, then it is dead law. He notes staff's position that because of the legislature's intent, the code sections were never really repealed. He disagreed and maintained that staff's analysis failed for mechanical reasons. Mr. Petersen indicated that staff took the 22 Title 5 regulations and compared them to the repealed Education Code sections to see if the regulations replaced the repealed sections. He asserted that staff did not go back to compare the repealed Education Code sections to the Title 5 regulations.

Member Steinmeier asked Mr. Petersen if he did an analysis and if he could provide any examples of differences between the accounting manuals. Mr. Petersen replied that his analysis never became necessary. Member Steinmeier also asked Mr. Petersen for a technical clarification regarding the method of analysis. Mr. Petersen provided that clarification.

Member Steinmeier then raised a question to the other members regarding how much weight intent language should be given, noting that it is not actual statute. Member Lazar expressed the same concern.

Ms. Tokarski maintained that intent language is uncodified statute. She added that she drew her conclusions from the sentence that is not intent language, which stated, "Should the Board of Governors fail to adopt and put into effect regulations in accordance with subdivision (a), the listed statutes shall remain operative until the effective date of the corresponding Board of Governors regulations." She noted that the histories of the code sections cite this and the repeal dates were changed accordingly.

Mr. de la Guardia concurred with staff regarding intent language. Noting the Budget Act, he clarified that uncodified law has the same effect as codified law. He also agreed with staff that laws are effective but not necessarily operative until the legislature determines when they are operative.

Member Sherwood agreed with Mr. de la Guardia, adding that the language in the statute regarding the legislature's intent is plain and clear.

Mr. de la Guardia indicated that the Department of Finance's position is that the test claim legislation does not constitute new programs. He added that they are not levels of service to the public, but a fiscal responsibility to manage public funds. He also commented on three of the five regulations that staff found to impose new programs or higher levels of service, concluding that they do not meet the criteria of new programs or higher level of service because they are all contingent on the actions or inactions of the districts.

Regarding the accounting manuals, Mr. de la Guardia asserted that the claimant cannot just submit the manuals and say everything is a new order. He noted that the claimant has a certain burden, which was not met.

Mr. de la Guardia agreed with staff's analysis regarding the effect and re-enactment of a repeal. However, he requested an opportunity to research and respond to the issues raised in the errata sheet.

Mr. Petersen commented that Mr. de la Guardia's argument regarding why the test claim legislation does not constitute new programs or higher levels of service was irrelevant. In response to Mr. de la Guardia's comments regarding the regulations approved by staff, Mr. Petersen maintained that failure to perform is not a reason not to reimburse. Regarding the accounting manuals, he argued that the claimants took a legal position that the entire manual was new because there had been several breaks in time where the manual did not exist. He also maintained that a repealed code section cannot be reenacted.

Mr. de la Guardia repeated his position that there was no gap and no mandates.

Member Steinmeier asked if staff analyzed the gaps in the accounting manuals. Ms. Tokarski responded that she did not find a gap in the law requiring use of the manuals. She noted that to her knowledge, there were manuals in effect the entire time. She further noted that the Education Code sections themselves require that the community college districts continuously use the state-prescribed procedures for audits, accounting, and budgeting, with no gaps.

Member Steinmeier asked another technical question regarding the accounting manuals. Mr. Petersen and staff provided clarification.

Member Harrigan indicated that he was not clear on what the outstanding issues were and where there was disagreement. He requested that staff come back with a summary document that shows what the outstanding issues are. The members agreed.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 6 *School District Fiscal Accountability Reporting*, 97-TC-19 (Formerly known as, Budget Process Financial Statements, and County Oversight)
Alameda County Office of Education, Claimant
Education Code Sections 42100, 42127, 42127.5, 42127.6, 42128, 42131, and Government Code Section 3540.2
Statutes of 1981, Chapter 100; Statutes of 1985, Chapter 185; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapters 917 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1990, Chapter 525; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 923 and 924; Statutes of 1994, Chapters 650 and 1002; and Statutes of 1995, Chapter 525

Cathy Cruz, Program Analyst with the Commission, introduced this item. She noted that on October 26, 2000, the Commission adopted the statement of decision for the *School District Fiscal Accountability Reporting* test claim, determining that the test claim legislation imposed a reimbursable new program upon school districts and/or county offices of education by requiring specific new activities to comply with the budget process. She recommended that the Commission adopt the claimant's proposed parameters and guidelines, as modified by staff.

Parties were represented as follows: Keith Petersen, representing the Alameda County Office of Education; Paul Minney, with Spector, Middleton, Young & Minney for Mandated Cost

Systems; Susan Geanacou, for the Department of Finance; and Jim Spano and Shawn Silva, for the State Controller's Office.

Mr. Petersen submitted that the claimant's proposed parameters and guidelines should be adopted as modified by staff.

Mr. Minney expressed two minor concerns. First, for purposes of clarification, he proposed a grammatical change in the boilerplate language under section VI. Supporting Data. He noted that the definition of supporting documents is followed by "and data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements." He argued that as written, the last part of the sentence could be interpreted as a modifier to mean that the examples provided have to be something that is otherwise kept in compliance with local, state, and federal requirements in order to meet the definition of supporting data. He did not think this was staff's intent, so he suggested separating this into two sentences.

Ms. Cruz clarified that staff's intent was just to provide a laundry list of examples of the types of documents that may be submitted. She added that staff did not receive any comments on the issue from any party, including the State Controller's Office.

Mr. Minney indicated that he was content with clarifying on the record that the last part of the sentence was not intended to modify the examples provided.

Mr. Silva maintained that he did not see the last part of the sentence as a modifier, and therefore, did not see a need for the change. He also noted that all incurred costs claimed must be traced to source documents that show evidence of the validity and relationship to the reimbursable activities. He added that "source documents" are a subset of documents and are generally thought of as having been created contemporaneously with the activity, rather than subsequent reporting and verification. For example, he said that invoices and receipts are important for internal operations to verify purchases and payments. If they were summarized in a log, the log itself would be a document but not a source document.

Mr. Minney said his second issue related to the reimbursable activity of certifications. He asked for clarification on whether staff intended to include multiyear projections as a cost associated with completing the certifications.

Ms. Tokarski, Commission Counsel, said that the language used was taken directly from the statement of decision and the statute. She also noted that the language proposed by Mr. Minney is from forms and is common terminology in the schools community. She maintained that it would be clearer to use the language recommended by staff.

Member Steinmeier suggested adding, in brackets or a footnote, that this means "multi-year" since that is terminology understood by claimants. Ms. Tokarski explained that by saying "this means multi-year," some districts might interpret that to mean four or five years out. She clarified that the statutory language only provides for two years and agreed to footnote in the parameters and guidelines that the certifications are commonly referred to as multiyear projections. Mr. Minney concurred.

Mr. Silva concurred, noting Ms. Tokarski's clarification.

Ms. Geanacou noted that the Department of Finance concurred with the State Controller's Office comments and agreed to the change as suggested by staff.

Member Steinmeier made a motion to approve staff's recommendation with the addition of the clarifying footnote. With a second by Member Harrigan, the motion carried unanimously.

- Item 7 *County Office of Education Fiscal Accountability Reporting (formerly known as, County Office Budget Process and Financial Statements)*, 97-TC-20
Alameda County Office of Education, Claimant
Education Code Sections 1240, subdivision (j), 1240.2, 1620, 1622, 1625, 1628, and 1630
Statutes of 1987, Chapters 917 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1990, Chapter 1372; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 923 and 924; Statutes of 1994, Chapters 650 and 1002; Statutes of 1995, Chapter 525
- Item 8 *Employee Benefits Disclosure*, CSM-4502, 98-TC-03
Clovis Unified School District & Sweetwater Unified High School District, Claimants
Education Code Sections 42140 and 42142
Statutes of 1994, Chapter 650; Statutes of 1995, Chapter 525; Statutes of 1996, Chapter 1158
- Item 9 *Law Enforcement College Jurisdiction* (formerly known as Campus Safety Plans), 98-TC-20
Contra Costa Community College District, Claimant
Education Code Section 67381
Statutes of 1998, Chapter 284

Ms. Higashi noted that there were no substantive issues on the reimbursable activities for items 7, 8, and 9. She said that the remaining issues pertained to the boilerplate language and the clarifications were already offered into the record previously in item 6. Member Steinmeier made a motion to adopt items 7, 8, and 9, noting the clarifications raised by Mr. Minney and Mr. Silva. With a second by Member Harrigan, the motion carried unanimously.

- Item 10 *Standardized Testing and Reporting*, 97-TC-23
San Diego Unified School District, Claimant
Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643
Statutes of 1997, Chapter 828; California Code of Regulations, Title 5, Sections 850-904

Nancy Patton, Staff Services Manager with the Commission, introduced this item. She noted that on August 24, 2000, the Commission adopted the statement of decision for the *Standardized Testing and Reporting (STAR)* test claim, determining that the test claim legislation imposed a reimbursable new program upon school districts by requiring them, between March 15 and May 15 each year, to test all students in grades 2 through 11 with nationally normed achievement tests designated by the State Board of Education. She added

that school districts were required to administer the designated achievement tests, commonly called the SAT-9. For students of limited English proficiency who were enrolled less than 12 months prior to the test date, school districts were required to administer the primary language test, commonly called the SABE/2 test.

Ms. Patton noted one outstanding issue: Whether or not an additional test may be included as a reimbursable activity under these parameters and guidelines. The statement of decision for the STAR program only covers Statutes of 1997, chapter 828. Statutes of 2000, chapter 576, which added Education Code section 60642.5, became effective on January 1, 2001, and required school districts to administer a standards-based achievement test. She stated that staff disagreed with the claimant's contention that the new standards-based achievement test should be included in the parameters and guidelines because it is administered concurrently with the other two tests. She explained that there are no Commission findings that the new test constitutes a new program or higher level of service and imposes cost mandated by the state, since the new test was established after the statement of decision was adopted and was not included in the test claim. Therefore, it could not be included in the STAR parameters and guidelines.

Ms. Patton also noted that a technical correction to a footnote was made at the claimant's request. She recommended that the Commission adopt the claimant's proposed parameters and guidelines, as modified by staff.

Parties were represented as follows: Art Palkowitz, representing the San Diego Unified School District; Mike Wilkening, for the Department of Finance; and Jim Spano and Shawn Silva, for the State Controller's Office.

Mr. Palkowitz stated that with the change in the footnote, he concurred with the staff analysis.

Mr. Wilkening stated that the Department of Finance concurred with the staff analysis. However, he noted that the four points specifically listed under section VII. Offsetting Savings and Reimbursements regarding what is reimbursable under school apportionment, is not an inclusive list. He added that the apportionment does include other activities not specifically mentioned.

Ms. Shelton, Commission Counsel, clarified the language. She stated that the first paragraph in section VII states: "In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim."

Mr. Silva supported the staff analysis.

Member Sherwood made a motion to approve the staff recommendation, noting the correction to the footnote. Ms. Higashi added that clarifications made regarding boilerplate language in item 6 are included here. With a second by Member Steinmeier, the motion carried unanimously.

EXECUTIVE DIRECTOR'S REPORT

Item 16 Workload, Legislation, Next Agenda

Ms. Higashi noted the following:

- *Workload.* Staff is finalizing a workplan through August 2002. Test claims have been scheduled for hearing through August, with a maximum of four test claims per hearing. Incorrect reduction claims with closed records have been scheduled through the June hearing.

- *Legislation.*

Local Claims Bill. With the adoption of the statewide cost estimates, staff will take the local government claims bill to the Legislative Counsel.

School Bus Safety II Audit. The report is scheduled to be issued in March.

- *Governor's Budget.*

The Commission, like all state agencies, has experienced reductions in the Governor's proposed budget.

In addition to the usual suspensions for local governments, there are also suspensions proposed in the Department of Education's budget for Prop 98 reimbursements.

The Legislative Analyst's Office is in the process of reviewing the budget. Staff has been sending them copies of all the statements of decision and parameters and guidelines for all the mandated programs currently in the budget so that they have them available for analysis.

- *Future Hearing Agendas.* The next hearing's agenda consists of the Community College District test claims and the Animal Adoption parameters and guidelines. The March agenda consists of incorrect reduction claims and the Megan's Law parameters and guidelines.

PUBLIC COMMENT

Chairperson Porini introduced former Commission member, Al Beltrami, to thank and recognize him for his dedicated service to the State of California. Chairperson Porini also presented him with a resolution on behalf of Commission members and staff. Following comments from the members, Mr. Allan Burdick, representing the League of California Cities and the California State Association of Counties Advisory Committee on State Mandates, came forward to pay tribute and present a gift to Mr. Beltrami. Mr. Beltrami expressed his appreciation for the opportunity to serve on the Commission.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.*, Case Number B140704, in the Appellate Court of California, Second Appellate District, Division 2.
2. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number D038027, in the Appellate Court of California, Fourth Appellate District, Division 1.
3. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
4. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number C037645, in the Appellate Court of California, Third Appellate District.
5. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of California, Fourth Appellate District.
6. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
7. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Superior Court of the State of California, County of Los Angeles.
8. *County of San Bernardino v Commission on State Mandates of the State of California et al.*, Case Number SCVSS72444, in the Superior Court of the State of California, County of San Bernardino.
9. *County of San Diego v. Commission on State Mandates, et al.*, Case Number GIC762953, in the Superior Court of the State of California, County of San Diego.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

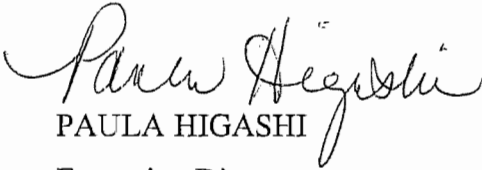
Hearing no further comments, Chairperson Porini adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Porini reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business and upon motion by Member Steinmeier and second by Member Williams, Chairperson Porini adjourned the meeting at 12:03 p.m.


PAULA HIGASHI
Executive Director

COMMISSION ON STATE MANDATES

30 NINTH STREET, SUITE 300
 CRAMENTO, CA 95814
 PHONE: (916) 323-3562
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January 25, 2002

Ms. Pamela A. Stone
 Legal Counsel
 Maximus
 4320 Auburn Blvd., Suite 2000
 Sacramento, CA 95841

And Affected State Agencies And Interested Parties (see mailing list)

Re: **Adopted Statewide Cost Estimate**
Extended Commitment - Youth Authority, 98-TC-13
 County of Alameda, Claimant
 Welfare and Institution Code Sections 1800, 1801, 1801.5
 Statutes of 1984, Chapter 546
 Statutes of 1998, Chapter 267

Dear Ms. Stone:

On January 24, 2002, the Commission on State Mandates adopted a statewide cost estimate for the above-entitled mandate according to the following schedule:

Fiscal year	# Claims Filed With SCO	Claim Totals
1997-98	3	\$18,544
1998-99	6	\$75,583
1999-00	5	\$19,992
2000-01	5	\$22,463
2001-02 (2.7%*)	n/a	\$23,070
2002-03 (2.1%*)	n/a	\$23,554
Total		\$183,206
Statewide Cost		
Estimate Total (Rounded)		\$183,000

* Implicit Price Deflator as forecast by Department of Finance

This amount will be included in our next Report to the Legislature. If you have any questions, please call Ms. Julie Shelton at (916) 232-5862.

Sincerely,

PAULA HIGASHI
 Executive Director

MAILED: ✓
DATE: 10/12
FAXED: ✓
INITIAL: VS
FILE: ✓
CHRON: ✓
WORKING BINDER: ✓

Statewide Cost Estimate

Welfare and Institutions Code Sections 1800, 1801 and 1801.5

Statutes of 1984, Chapter 546

Statutes of 1998, Chapter 267

Extended Commitment—Youth Authority

Mandate Background

The test claim legislation requires the district attorney to represent the Youthful Offender Parole Board (YOPB) in civil commitment procedures for the continued involuntary treatment of persons that the YOPB has determined would pose a physical danger to the public if released from the Youth Authority.

The County of Alameda filed the test claim on May 10, 1999. The Commission adopted the Statement of Decision on January 25, 2001, and the Parameters and Guidelines on May 24, 2001. Costs incurred for Statutes of 1984, Chapter 546 are eligible for reimbursement on or after July 1, 1997.¹

Eligible Claimants

Any county or city and county.

Reimbursable Activities

For each eligible claimant, the direct and indirect costs of labor, materials and supplies, contracted services, fixed assets, travel, and training incurred for the following mandate components are reimbursable:

A. One-time Activities

1. Developing internal policies, procedures, manuals and other materials pertaining to the district attorney representing the YOPB in extended commitment proceedings of CYA wards.
2. Providing each person employed by the district attorney's office that works on the mandated program with training, publication, and information regarding extended commitment proceedings and criteria for determining whether the ward poses a danger to the public due to the individual's mental or physical deficiency, disorder, or abnormality (one-time per employee).

¹ Statutes of 1998, Chapter 267 did not impose any new reimbursable activities on counties.

B. Continuing Activities

Administrative

1. Updating internal policies, procedures, manuals and other materials pertaining to the district attorney representing the YOPB in extended commitment proceedings of CYA wards to reflect changes in law due to a court's interpretation of the test claim legislation.
2. Developing and maintaining manual or electronic files pertaining to the district attorney representing the YOPB in extended commitment proceedings of CYA wards.

Extended Commitment Proceedings

Counties are entitled to reimbursement for the following activities only after the YOPB determines that the discharge of a person from the control of the Youth Authority at the stated time would be physically dangerous to the public, and the YOPB requests representation of the district attorney in extended commitment proceedings pursuant to Welfare and Institutions Code section 1800:

3. Reviewing the YOPB's written statement of facts, and files and records, upon which the YOPB bases its opinion that discharge from control of the Youth Authority at the time stated would be physically dangerous to the public.
4. Preparing and filing petitions and supporting documentation with the superior court for the extended commitment, and subsequent recommitment, of CYA wards determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority.
5. Representing the state in probable cause hearings, civil trials, and hearings on motions in the superior court pertaining to the extended commitment, and subsequent recommitment of CYA wards determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority.
6. Retaining or hiring necessary experts, investigators, and professionals to prepare for probable cause hearings and civil trials pertaining to the extended commitment, and subsequent recommitment, of CYA wards determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority.

Costs to subpoena witnesses, including witness fees and expert witness fees, are reimbursable under this activity.

7. If the district attorney deems it necessary, traveling to and from state hospitals or the ward's place of confinement to obtain medical records, case files, and interview prospective witnesses pertaining to the extended commitment, and subsequent recommitment, of any CYA ward determined by the YOPB to be physically dangerous to the public if discharged from the control of the Youth Authority.

Assumptions

Staff made the following assumptions:

- The claiming data is accurate, although unaudited.
- There will not be any late claims filed.²

Methodology

To arrive at the total statewide cost estimate:

- Staff used unaudited actual claim totals filed with the State Controller for prior fiscal years (FYs) by eligible claimants.³
- Staff projected totals for FY 2001-02 by multiplying the FY 2000-01 claim total filed by claimants with the State Controller's Office times the implicit price deflator for 2001-02 (2.7%), as forecasted by the Department of Finance. Staff projected totals for FY 2002-03 by multiplying the 2001-02 estimate by the implicit price deflator for 2002-03 (2.1%).

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of \$183,000 for costs incurred in complying with the *Extended Commitment—Youth Authority* provisions.

Following is a breakdown of estimated total costs per fiscal year:

Fiscal year	# Claims Filed With SCO	Claim Totals
1997-98	3	\$18,544
1998-99	6	\$75,583
1999-00	5	\$19,992
2000-01	5	\$22,463
2001-02 (2.7% ⁴)	n/a	\$23,070
2002-03 (2.1% ⁵)	n/a	\$23,554
Total		\$183,206
Statewide Cost Estimate Total (Rounded)		\$183,000

Because the reported costs are prior to audit and partially based on estimates, the statewide cost estimate of \$183,206 has been rounded to \$183,000.

² If the Legislature appropriates the amount of the statewide cost estimate and actual claims exceed this amount, the State Controller's Office will prorate the claims. If the deficiency funds are not appropriated in the Budget Act, the Controller will report this information to the legislative budget committees and the Commission on State Mandates. The Commission will then include the deficiency in its report to the Legislature in order to ensure that it is included in the next claims bill.

³ State Controller's Office data as of December 27, 2001.

⁴ Implicit Price Deflator as forecast by Department of Finance.

⁵ *ibid.*

Commission on State Mandates

List Date: 05/17/1999

Mailing Information Notice of adopted SCE

Mailing List

Claim Number 98-TC-13 Claimant County of Alameda

Subject Chap. 546/84 & 267/98

Issue Extended Commitment - Youth Authority

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Chap. 546/84 & 267/98

Issue

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